FEDERAL-PROVINCIAL RELATIONS

801 An Overview

Canada

27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces. (42)

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(42) Legislative authority has been conferred on Parliament by other Acts as follows:

1. The *British North America Act, 1871*, 34-35 Vict., c. 28 (U.K.).

> **2.** The Parliament of Canada, may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.
>
> **3.** The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.
>
> **4.** The Parliament of Canada may from time to time make provision for the administration peace, order, and good government of any territory not for the time being included in any Province.
>
> **5.** The following Acts passed by the said Parliament of Canada, and intituled respectively,—"An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada"; and "An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of "the Province of Manitoba," shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor General of the said Dominion of Canada.
>
> **6.** Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

The *Rupert's Land Act 1868*, 31-32 Vict., c. 105 (U.K.) (repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.)) had previously conferred similar authority in relation to Rupert's Land and the North-Western Territory upon admission of those areas.

2. The *British North America Act, 1886*, 49-50 Vict., c. 35, (U.K.).

> **1.** The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any province thereof.

3. The *Statute of Westminster, 1931*, 22 Geo. V, c. 4, (U.K.).

> **3.** It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

Exclusive Powers of Provincial Legislatures.

Subjects of exclusive Provincial Legislation.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
    (*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;
    (*b*) Lines of Steam Ships between the Province and any British or Foreign Country;
    (*c*) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

Education.

Legislation respecting Education

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

(3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the

Provisions of this Section and of any Decision of the Governor General in Council under this Section. (43)

Uniformity of Laws in Ontario, Nova Scotia and New Brunswick.

94. Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or Legislation for Uniformity of Laws in Three Provinces.

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(43) Altered for Manitoba by section 22 of the *Manitoba Act*, 33 Vict., c. 3 (Canada), (confirmed by the *British North America Act, 1871*), which reads as follows:

> **22.** In and for the Province, the said Legislature may exclusively make Laws in relation to Education, subject and according to the following provisions:—
>
> (1) Nothing in any such Law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by Law or practice in the Province at the Union:
>
> (2) An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the Province, or of any Provincial Authority, affecting any right or privilege, of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education:
>
> (3) In case any such Provincial Law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper Provincial Authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

Altered for Alberta by section 17 of *The Alberta Act*, 4-5 Edw. VII, c. 3 which reads as follows:

> **17.** Section 93 of The British North America Act, 1867, shall apply to the said province, with the substitution for paragraph (1) of the said section 93 of the following paragraph:—
>
> (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.
>
> **2.** In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereof, or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.
>
> **3.** Where the expression "by law" is employed in paragraph 3 of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30, and where the expression "at the Union" is employed, in the said paragraph 3, it shall be held to mean the date at which this Act comes into force.

Altered for Saskatchewan by section 17 of *The Saskatchewan* Act, 4-5 Edw. VII, c. 42, which reads as follows:

> **17.** Section 93 of the British North America Act, 1867, shall apply to the said province, with the substitution for paragraph (1) of the said section 93, of the following paragraph:—
>
> (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.
>
> **2.** In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment thereof or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.
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> **3.** Where the expression "by law" is employed in paragraph (3) of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30; and where the expression "at the Union" is employed in the said paragraph (3), it shall be held to mean the date at which this Act comes into force.

any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in Those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

Old Age Pensions.

Legislation respecting old age pensions and supplementary benefits.

94A. The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matter. (44)

Agriculture and Immigration.

Concurrent Powers of Legislation respecting Agriculture, etc.

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

Altered by Term 17 of the Terms of Union of Newfoundland with Canada (confirmed by the *British North America Act, 1949*, 12-13 Geo. VI, c. 22 (UK.)), which reads as follows:

> **17.** In lieu of section ninety-three of the British North America Act, 1867, the following term shall apply in respect of the Province of Newfoundland:
>
> In and for the Province of Newfoundland the Legislature shall have exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland, provided for education,
>
> (*a*) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature; and
>
> (*b*) all such colleges shall receive their share of any grant from time to time voted for all colleges then being conducted under authority of the Legislature, such grant being distributed on a non-discriminatory basis.

(44) Added by the *British North America Act, 1964*, 12-13, Eliz. II, c. 73 (U.K.). Originally enacted by the *British North America Act, 1951*, 14-15 Geo. VI, c. 32 (U.K.), as follows:

> **94A.** It is hereby declared that the Parliament of Canada may from time to time make laws in relation to old age pensions in Canada, but no law made by the Parliament of Canada in relation to old age pensions shall affect the operation of any law present or future of a Provincial Legislature in relation to old age pensions.

CANADA

EXTRACTS FROM

A Consolidation of

THE BRITISH NORTH AMERICA ACTS

1867 to 1975

DEPARTMENT OF JUSTICE
CANADA

Prepared for the Department of Justice by
Elmer A. Driedger, Q.C., B.A., LL.B., LL.D.
Professor of Law, University of Ottawa.
Formerly Deputy Minister of Justice and
Deputy Attorney General of Canada

Consolidated as of June 1, 1976

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89. Repealed. (38)

6.—THE FOUR PROVINCES.

Application to Legislatures of Provisions respecting Money Votes, etc.

90. The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

Legislative Authority of Parliament of Canada.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to

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(38) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). The section read as follows:

5. ONTARIO, QUEBEC, AND NOVA SCOTIA.

89. Each of the Lieutenant Governors of Ontario, Quebec and Nova Scotia shall cause Writs to be issued for the First Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor General directs, and so that the First Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of Canada for the Electoral District

schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House. (39)

1A. The Public Debt and Property. (40)
2. The Regulation of Trade and Commerce.
2A. Unemployment insurance. (41)
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.

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(39) Added by the *British North America (No. 2) Act, 1949*, 13 Geo. VI, c. 81 (U.K.).

(40) Re-numbered by the *British North America (No. 2) Act, 1949*.

(41) Added by the *British North America Act, 1940*, 3-4 Geo. VI, c. 36 (U.K.).

27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces. (42)

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(42) Legislative authority has been conferred on Parliament by other Acts as follows:

1. The *British North America Act, 1871*, 34-35 Vict., c. 28 (U.K.).

> 2. The Parliament of Canada, may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.
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> 3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.
>
> 4. The Parliament of Canada may from time to time make provision for the administration peace, order, and good government of any territory not for the time being included in any Province.
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> 5. The following Acts passed by the said Parliament of Canada, and intituled respectively,— "An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada"; and "An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of "the Province of Manitoba," shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor General of the said Dominion of Canada.
>
> 6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

The *Rupert's Land Act 1868*, 31-32 Vict., c. 105 (U.K.) (repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.)) had previously conferred similar authority in relation to Rupert's Land and the North-Western Territory upon admission of those areas.

2. The *British North America Act, 1886*, 49-50 Vict., c. 35, (U.K.).

> 1. The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any province thereof.

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Subjects of exclusive Provincial Legislation.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
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    (*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;
    (*b*) Lines of Steam Ships between the Province and any British or Foreign Country;
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11. The Incorporation of Companies with Provincial Objects.
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14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

Education.

Legislation respecting Education

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

(3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the

Provisions of this Section and of any Decision of the Governor General in Council under this Section. (43)

Uniformity of Laws in Ontario, Nova Scotia and New Brunswick.

94. Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or Legislation for Uniformity of Laws in Three Provinces.

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(43) Altered for Manitoba by section 22 of the *Manitoba Act*, 33 Vict., c. 3 (Canada), (confirmed by the *British North America Act, 1871*), which reads as follows:

> **22.** In and for the Province, the said Legislature may exclusively make Laws in relation to Education, subject and according to the following provisions:—
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> (1) Nothing in any such Law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by Law or practice in the Province at the Union:
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> (2) An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the Province, or of any Provincial Authority, affecting any right or privilege, of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education:
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> (3) In case any such Provincial Law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper Provincial Authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

Altered for Alberta by section 17 of *The Alberta Act*, 4-5 Edw. VII, c. 3 which reads as follows:

> **17.** Section 93 of The British North America Act, 1867, shall apply to the said province, with the substitution for paragraph (1) of the said section 93 of the following paragraph:—
>
> (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.
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> **2.** In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereof, or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.
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> **3.** Where the expression "by law" is employed in paragraph 3 of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30, and where the expression "at the Union" is employed, in the said paragraph 3, it shall be held to mean the date at which this Act comes into force.

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Legislation respecting old age pensions and supplementary benefits.

94A. The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matter. (44)

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Concurrent Powers of Legislation respecting Agriculture, etc.

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

Altered by Term 17 of the Terms of Union of Newfoundland with Canada (confirmed by the *British North America Act, 1949*, 12-13 Geo. VI, c. 22 (UK.)), which reads as follows:

> **17.** In lieu of section ninety-three of the British North America Act, 1867, the following term shall apply in respect of the Province of Newfoundland:
>
> In and for the Province of Newfoundland the Legislature shall have exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland, provided for education,
>
> (*a*) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature; and
>
> (*b*) all such colleges shall receive their share of any grant from time to time voted for all colleges then being conducted under authority of the Legislature, such grant being distributed on a non-discriminatory basis.

(44) Added by the *British North America Act, 1964*, 12-13, Eliz. II, c. 73 (U.K.). Originally enacted by the *British North America Act, 1951*, 14-15 Geo. VI, c. 32 (U.K.), as follows:

> **94A.** It is hereby declared that the Parliament of Canada may from time to time make laws in relation to old age pensions in Canada, but no law made by the Parliament of Canada in relation to old age pensions shall affect the operation of any law present or future of a Provincial Legislature in relation to old age pensions

THE POWERS OF A PROVINCE IN THE CANADIAN FEDERATION WITH SOME COMPARATIVE NOTES ON THE UNITED STATES

by

John A. Hayes

Federal-Provincial Relations Office *

Ottawa, 1977

* The views expressed in this paper are those of the author and do not necessarily represent those of the Federal-Provincial Relations Office.

THE POWERS OF A PROVINCE IN THE CANADIAN FEDERATION

1. The powers of a province depend upon

   (a) its own economic and human resources
   (b) the structure of the Canadian federal system
   (c) the way in which the Canadian federal system operates.

2. A province's economic and human resources

2.1 No country of any size is free from regional disparities. Canada's vast size and language composition inhibit labour mobility and therefore the market forces which help to equalize.

2.2 Nevertheless, there has been some narrowing of personal per capita income disparities between the three richer provinces and the other seven. Quebec in recent years has been at 90 per cent of the national average. Newfoundland and New Brunswick have reached about the 65 per cent, up from about 60 per cent ten years ago.

2.3 Equalization payments and federal contributions under joint programs supplement provincial resources, as do the activities of DREE and other federal agencies.

3. The structure of the Canadian federal system

3.1 Constitutionally, the provinces have authority over matters of a local nature, such as education, hospitals, assistance to the needy, highways, municipal organization and services, police and the administration of justice.

3.2 Provincial powers with regard to property and civil rights have been interpreted very broadly, e.g. with regard to certain matters in the economic field such as labour relations, insurance and consumer affairs. Quebec has its own Civil Code. The federal trade and commerce power has been narrowly interpreted, compared with the federal interstate commerce power in the U.S.

3.3 Provinces have concurrent jurisdiction (federal paramountcy) over agriculture and immigration.

3.4 Provinces own and regulate the exploitation of natural resources, and they have jurisdiction over many aspects of the environment.

.../2

3.5 Provinces have authority over their own constitutions and (unlike in the USA) over their voting procedures. However, they may not change the Office of Lieutenant-Governor.

3.6 Provinces are consulted with regard to amendments to the BNA Act. Quebec has been offered a veto with regard to amendments affecting the distribution of powers.

3.7 Provinces have much the same taxing powers as the federal government (except customs duties and indirect sales taxes). Provinces can and do borrow on foreign markets without needing to seek federal authorization.

4. The operation of the Canadian federal system

4.1 Canada's Constitution was drawn up shortly after the U.S. Civil War. The intention was to create a strongly centralized system. Partly as the result of judicial interpretation, but also because of political factors, Canada's federal system is now one of the most decentralized in the world.

4.2 Most provinces (including Quebec) obtain most of their revenues from their own taxation. The federal government tranfers about one-fifth of its budget to the provinces, in the form of equalization (unconditional, and calculated by an"automatic" formula) and contributions to joint programs(which are for the most part subject to only general conditions, e.g. of a kind designed to ensure "portability" of health benefit entitlements from one province to another).

4.3 The federal and provincial-local shares of final public spending are now roughly in the ratio 40:60, compared with an almost exactly reverse situation 25 years ago. In the United States the federal share is higher, whether defence expenditures are included or excluded.

4.4 Many U.S. federal grants (all are conditional) go direct to municipalities with little or no control by state governments. In Canada, intergovernmental transfers go generally speaking only to provincial governments, it being acknowledged that municipal organization and financing are strictly provincial. Politically, and probably financially, local authorities are stronger in the United States vis-à-vis the States, compared with the local-provincial relationship in Canada.

4.5 Recent federal policies have sought to secure an appropriate place for French-speaking Canadians in the political and economic life of Canada, e.g. official languages legislation, federal government recruiting and appointments, French-language broadcasting network, etc.

4.6 There are special provisions to give the Government of Quebec a direct role in the selection of immigrants.

.../3

4.7 The Canadian Constitution and Canadian federalism are flexible, e.g.

- The Quebec Pension Plan exists side by side with the Canada Pension Plan
- Special "opting-out" arrangements wich enable Quebec to receive a special abatement from federal personal income taxes in respect of taxes levied by Quebec to finance hospital insurance etc.
- Quebec collects its own personal income tax
- All provincial governments may vary federal family allowance payments, and some do (including Quebec).

5. Summary

5.1 From a constitutional point of view there is much that a provincial government may do. The exceptions relate to actions that would seriously affect another province, or the functioning of the Canadian economic union, from which all provinces draw considerable benefits.

5.2 Federal activities have not seriously impinged on provincial autonomy. Federal "welfare state" initiatives have for the most part been effected through "neutral" cash payments to individuals or through joint federal-provincial programs. The federal role in joint programs has recently also become relatively neutral, especially with the advent of the new Established Programs Financing Arrangements.

5.3 There has been increasing interdependence between the federal and provincial levels and increasing consultation. Federal-provincial negotiation parallels in a sense the reconciliation of regional differences that takes place in the U.S. Congress.

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Federal-Provincial Fiscal Arrangements

and Established Programs Financing Act

Legislation transferring $8.5 billion in cash and taxing power to provincial governments was introduced today in the House of Commons by Finance Minister Donald S. Macdonald.

The legislation provides authority in law to implement the federal-provincial financial agreements reached by the First Ministers in December, as well as a number of related decisions taken more recently.

The main items contained in the new Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977:

Part I - Equalization - Renewal with modifications of the program of annual payments to provinces having below-average per capita capacity to raise revenues, in order to help them provide public services.

Part II - Revenue Stabilization - Renewal of the program which provides payments to any province if its revenues decline due to a downturn in economic activity.

Part III - Tax Collection Agreements - Continuation of the central system under which the federal government collects free of charge personal and corporate income taxes levied by provinces which adopt a uniform tax system.

Part IV - Revenue Guarantee - A new year-by-year guarantee to protect provinces against any major income tax losses arising from personal income tax changes by the federal government.

Part V - Undistributed Income on Hand - The provinces continue to share the elective tax on the 1971 undistributed income of corporations.

Part VI - Established Programs Financing - A new system of tax and cash transfers replacing the previous cost-sharing arrangements for federal contributions to medicare, hospital insurance and post-secondary education. The legislation also introduces provision for new contributions to extended health care services.

Part VII - Alternate Payments for Standing Programs - Replacing the Established Programs (Interim Arrangements) Act - "contracting-out" - under which Quebec received a special abatement of 24 personal income tax points for Youth Allowances, Special Welfare and Hospital Insurance. Because of a general federal tax reduction the abatement will be reduced to 16.5 personal income tax points in order to have the same net effect, on the Government of Quebec and Quebec taxpayers following introduction of the new Established Programs Financing.

Part VIII - Provincial Taxes and Fees (Reciprocal Taxation) - Authority is provided for federal-provincial agreements whereby provinces pay federal consumption taxes on their purchases of goods and the federal government makes payments in lieu of provincial consumption taxes and fees on its purchases of goods and services.

Part I: Equalization

Equalization is a program of annual federal payments to provinces that are below the national average per capita in their capacity to raise revenues from their own sources. In effect, the payments help to alleviate regional income disparity and are intended to enable lower-income provincial governments to provide services to the public at reasonable standards without having to resort to excessive rates of taxation.

The present equalization system of payments is extended with the following modifications:

(1) The present formula, known as the "representative tax system", has been redefined to better reflect what the provinces are now taxing. This has involved a reclassification of the revenues that are equalized so that they fall into 29 groups (referred to as "revenue sources") rather than 22 as at present. Among other things, this change enables the formula to give separate recognition to tobacco taxes, payroll taxes, lotteries and insurance premium levies which have become of increasing importance in recent years. In addition, numerous changes have been made in the measures of fiscal capacity (referred to as "revenue bases") for equalizing the 29 groups of revenue. The revenue bases are complex and technical; they continue to be defined in regulations.

(2) The treatment of natural resources has been changed. Commencing with 1974-75, provincial revenues from natural resources have been only partly included in equalization. It is proposed to continue to restrict the resource revenues subject to equalization but to do so in a more consistent way. At the present time, revenues from minerals are equalized in full, while oil and gas revenues are split into two parts - "basic" and "additional" - with basic revenues equalized in full, and additional revenues (essentially the increase in revenues beyond 1973-74 levels) equalized to the extent of one-third only. The new formula equalizes one-half of all revenues

from non-renewable resources (minerals, oil and gas). Provincial revenues from renewable resources (e.g. forestry and water power) would continue to be equalized in full.

(3) Changes have been built into the formula to reduce existing possibilities for equalization entitlements of a province to be influenced arbitrarily by its own actions. A new revenue source, "business income", combines provincial revenues from the incomes of both private sector and public sector enterprises. This change is intended to prevent a province's equalization entitlement from being increased as a result of its having acquired a privately-owned, profit-making corporation.

(4) A partial ceiling has been built into the equalization formula relating to natural resource revenues. The total amount of equalization payable in respect of natural resource revenues (including both renewable and non-renewable resources) may not exceed one-third of total equalization. The level of one-third is somewhat above the existing level and is unlikely to become applicable unless there is a very substantial increase in provincial revenues from oil and gas.

Part II: Fiscal Stabilization Payments

This involves unconditional payments to any province whose total revenues fall short of its previous year's total due to a downturn in economic activity. No payments have been made to the provinces since the program was introduced in 1967 as provincial revenues have risen steadily. However, the program has proved useful to provinces in borrowing, particularly when they have resorted to foreign capital markets.

The program is renewed but federal liability is limited by a threshold in respect of natural resource revenues. Stabilization will be payable in respect of resource revenues only to the extent that a year-to-year decrease exceeds 50 per cent. This provision prevents the possibility

of making substantial stabilization payments to resource-rich provinces whose revenues could fall from present or future high levels as a result of declining volumes of production or reductions in the prices of their resources.

Part III: Tax Collection Agreements

Since 1962, personal and corporate income taxes in most provinces have been collected by the federal government under uniform federal rules. The new Act authorizes the federal government to enter into collective agreements not only with the provinces, but with the two Territories as well.

Part IV: Revenue Guarantee

The guarantee encourages maintenance of a common tax system across Canada. It commits the federal government to pay for any loss in provincial income tax revenue as a result of federal changes in personal income taxes that exceed 1 per cent of federal basic tax in the province. The guarantee applies to all changes announced after the beginning of the tax year and effective in that year. It does not apply to corporate income tax.

The Province of Quebec collects its own personal income tax, and would not be directly affected; however, if Quebec makes a similar change in the same year, a similar payment will be made.

Part V: Undistributed Income on Hand

These provisions extend the arrangement for provinces to receive a share of the elective tax on 1971 undistributed income of corporations. The tax relates to retained profits earned prior to tax reform in 1972. Payments will decline and eventually disappear but this may take some time since the disbursements are influenced by the liquidity requirements of corporations. For this reason the program has no time limit. By March 31, 1977, nearly $50 million will have been paid to the provinces.

Part VI: Established Programs Financing

The new agreement replaces the cost-sharing arrangements for medicare, hospital insurance and post-secondary education, and incorporates certain extended health care services options. Under the new agreement federal contributions will grow with the growth of the economy rather than with the growth of provincial expenditures. Federal contributions will take the form of a tax transfer - a reduction of federal taxes to allow an equivalent increase of provincial taxes - and cash payments.

The new agreement is intended to maintain national objectives and standards of services; put financing on a more stable footing to help financial management at both levels of government; give provinces more flexibility in the use of their own funds; provide greater equality among the provinces with respect to the amount of federal funds they receive.

In this agreement, the federal government will transfer to the provinces 13.5 percentage points of personal income tax plus one percentage point of corporate tax. This includes the 4.357 personal and one corporate tax point previously transferred for post-secondary education. This represents an additional transfer of 9.143 points.

There are three parts to the federal government's cash contribution: the basic contribution, transition payments, and a levelling adjustment. The basic contribution provides stable cash funding to the provinces. The amount is one-half the national average per capita federal contribution in the base year (1975-76) increased by the escalator (the three-year compound rate of growth in the GNP). The basic cash amount is further increased by the value of the one point of personal income tax and associated equalization. This plus an additional point as a tax transfer was added as part of the agreement among First Ministers in December.

The federal government will make levelling adjustments in cash payments so that provinces where federal contributions now are above the national average in per capita terms will be brought to the national average in

five years; provinces where federal contributions are now below the national average will be brought up to the national average in three years. Subsequently basic cash payments will be equal per capita in all provinces.

Because the value of tax transfers differs between provinces, transitional payments will be made to ensure that all provinces receive at least as much in tax plus cash as if the entire transfer were in cash. These payments should gradually disappear since provincial tax yields grow more rapidly than the economy and the cash transfer.

With regard to Hospital Insurance and Medical Care, this part of the legislation involves a change in the method of financing the federal contribution to these programs. These new arrangements will provide the provinces with greater flexibility in the use of their own funds, while safeguarding the national standards now applied to the hospital insurance and medical care programs: comprehensiveness of coverage with regard to services, universality of coverage with regard to people, portability of benefits, accessibility to services uninhibited by excessive user charges, and non-profit administration by a public agency.

In addition, the Bill includes provision to compensate the provinces for extended health care services, including nursing home intermediate care, adult residential care, converted mental hospitals, home care (health aspects), and ambulatory health care services. The Bill includes sections dealing with two aspects upon which decisions are still open pending the outcome of discussions with the provinces: 1) the mechanism to be used to determine the provincial entitlement under the Hospital Insurance and Diagnostic Services Act for the first quarter of 1977; and 2) the quantum of the per capita transfer for the Extended Health Care Services, and whether or not room and board, clothing, comforts and non-insured health benefits to persons in need would continue to be shared under the Canada Assistance Plan. Amendments may have to be introduced during the legislative process if the Bill as tabled, does not reflect the consensus of the provinces on these points. The Secretary of State will meet regularly with provincial education ministers to discuss matters of mutual interest and concern.

The new financial agreements will continue indefinitely. Changes will require agreement on three years' notice, and the Government of Canada has agreed not to give such notice before April, 1979.

Part VII: Alternate Payments for Standing Programs (Contracting Out)

In the mid-1960s, arrangements were made with Quebec to assume administrative and financial responsibility for certain joint programs in return for an abatement of personal income tax points. For hospital insurance, 16 income tax points were abated; for the special welfare program, including the Canada Assistance Plan, 5 points were abated; and 3 points were abated for youth allowances - for a total of 24 points. In 1973, the youth allowance program came to an end and the value of 3 points has since been deducted from other payments owing to Quebec.

The total contribution to Quebec under these programs was the same as if it had been under the cash payment arrangement with other provinces.

Under the new fiscal arrangements this special abatement will be reduced in order to leave the Quebec taxpayer in the same position before and after the federal personal income tax cut of 9.143 per cent. The 24-point abatement to Quebec will be reduced by the 9.143 points transferred to all provinces to 14.857. Since the federal tax base on which the abatement is calculated is reduced, this new abatement is equivalent to 16.5 per cent of the new, smaller federal tax base. The 16.5 points will be allocated as follows:

3 points for Youth Allowances,
5 points for Special Welfare, and
8.5 points for Established Programs Financing.

Part VIII: Provincial Taxes and Fees (Reciprocal Taxation)

The federal government and six provinces (Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland) have approved a federal-provincial system of reciprocal taxation on consumption taxes.

Under the system, the provinces will agree to pay federal sales taxes on their purchases of goods and the federal government will make payments in lieu of provincial sales taxes, gasoline taxes and motor vehicle licence fees on its purchase of goods and services, and for federal vehicles operating in these provinces.

Under the existing sales tax arrangements generally, the provinces do not bear the indirect federal sales tax and the federal government does not pay the direct sales taxes of the province.

The system will take effect on October 1, 1977 and the initial agreement, with provisions for renewal, will terminate on March 31, 1981. On a full fiscal-year basis, the six provinces will pay an estimated $75 million in federal sales taxes while the federal government will pay $100 million in provincial taxes and motor vehicle licence fees.

This new arrangement has been developed over the past several years in co-operation with the provinces, in response to many federal-provincial problems which have arisen with respect to the intergovernmental application of sales taxes. The arrangement will help establish the principle that the government sector should pay the same taxes on its economic activity as the private sector.

Part IX: General

The tax transfer that occurs as part of the new financing arrangements for medicare, hospital insurance and higher education takes place effective January 1, 1977 - with federal taxes dropping by 9.143 per cent, and provincial taxes increasing by the equivalent amount. However, the actual conversion of the three programs takes place April 1, 1977. This results in the accrual of a three-month overpayment of tax revenue to the provinces. On the other hand, because of the lag between accruals and payments under the tax collection agreements, provinces begin receiving the benefit of the "overpayment", only in March, 1977. A somewhat different adjustment will be made with Quebec as a result of its special arrangement in hospital insurance. To settle this transitional

problem, the bill proposes that only half of the three-month overpayment will be recovered by the federal government. The full recovery would involve over $700 million. The proposal would recover about $350 million.

Part X: Consequential Amendments

Part of the Established Program Financing (EPF) program consists of a "tax transfer" to the provinces. This transfer essentially involves a reduction in federal income tax revenues matched by an offsetting increase in provincial income tax revenues, thus leaving the total tax burden on taxpayers unchanged. The EPF agreement stipulates transferring 13.5 points of personal income tax and one point of corporation income tax in respect of the established programs. However, the proposed transfer includes the 4.357 personal income tax points and one corporation income tax point that were first transferred in 1967 under the Post-Secondary Education arrangements and which are currently reflected in federal collections. Thus the net additional transfer consists of 9.143 personal-income-tax points.

There are basically two adjustments to the federal Income Tax Act necessitated by the transfer. First, the federal tax rates have to be lowered by 9.143 per cent. Second, the federal tax-cut rate has to be increased from 8 per cent to 9 per cent (rounded up from 8.81 per cent) to maintain the value of the tax cut. The tax cut is expressed as a percentage of the basic federal tax which will now be lowered by 9.143 per cent. The proposed increase in the rate is necessary to offset the effect of the decline in the base, thereby leaving the value of the tax cut unchanged.

These amendments are essentially consequential in nature and reflect a simple arithmetic conversion of the various rates currently used to compute the federal tax payable. The amendments proposed deviate slightly from a strict arithmetic adjustment due to rounding adjustments which are necessary in order to avoid complexity. The revenue implications of these deviations are negligible.

Other consequential amendments relating to the dividend tax credit and the territorial tax rate will be dealt with later in the session.

1977 FEDERAL INCOME TAX RATES

Taxable Income	Tax			
$710 or less	6%			
In Excess of				
$ 710	$ 43	+	16% on next	$ 709
$ 1,419	$ 156	+	17% on next	$ 1,419
$ 2,838	$ 397	+	18% on next	$ 1,419
$ 4,257	$ 653	+	19% on next	$ 2,838
$ 7,095	$ 1,192	+	21% on next	$ 2,838
$ 9,933	$ 1,788	+	23% on next	$ 2,838
$12,771	$ 2,441	+	25% on next	$ 2,838
$15,609	$ 3,150	+	28% on next	$ 4,257
$19,866	$ 4,342	+	32% on next	$14,190
$34,056	$ 8,883	+	36% on next	$21,285
$55,341	$16,546	+	39% on next	$29,799
$85,140	$28,167	+	43% on remainder	

FEDERAL-PROVINCIAL COORDINATION AND CONSULTATION IN CANADA

WITH SOME COMPARATIVE NOTES ON OTHER FEDERAL SYSTEMS

by

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This is an abridged version of a paper presented at the Conference on MAKING FEDERALISM WORK: TOWARDS A MORE EFFICIENT, EQUITABLE AND RESPONSIVE FEDERAL SYSTEM, Centre for Research on Federal Financial Relations, Australian National University, Canberra, 27-29 August 1975.

Copies of the full text may be obtained at Canadian Unity Information Office upon request.

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FEDERAL-PROVINCIAL COORDINATION AND CONSULTATION IN CANADA

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INTRODUCTION

This paper focuses on coordination of the activities of the federal and provincial levels of government. The term "coordination" is used in the sense of bringing into harmony the activities of the federal government and those of one or more provincial governments. Consultation is one way in which this coordination may be achieved. In Canada it is the principal way.

The central problem is how to reconcile the somewhat contradictory demands of coordination and autonomy. Coordination need not imply uniformity - people sometimes prefer the term "harmonisation" to stress this point - but it does imply some loss of autonomy, that is, loss of freedom to act independently. And coordination implies - it is almost synonymous with - cooperation. There is, in fact, more cooperation among governments than conflict.

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*The views expressed in this paper are those of the author and do not necessarily reflect those of the Federal-Provincial Relations Office.

The Need for Coordination

The need for coordination (of the federal-provincial kind) is probably greatest in a federation in which the two levels of government are fairly equally balanced in terms of autonomy. The more a federal system approaches a unitary state the less need there is for such coordination, because the central government tends to impose its policies. There may or may not then, in such a case, be a need for more autonomy for the constituent provinces, which in turn would bring about a need for more federal-provincial coordination. At the other end of the scale is the loose confederation, where there are fewer activities which need to be coordinated.

Canada is a federation in which, compared with some other federations such as Australia, the United States and even Switzerland, the autonomy or political power of the two levels seems to be more equally balanced, and therefore one in which coordination between the two is particularly important.

The Prerequisites for Successful Coordination

Assuming that we have several governments which seek to co-operate with one another, what are the prerequisites for a successful outcome? A strict balance of negotiating strength as between the federal and provincial levels is probably not necessary any more than it is in other negotiations in the private sector and internationally. What does seem to be necessary is a certain degree of mutual confidence or trust, an absence of suspicion, about some basic rules of the game. For example, if the provinces believe the central government is seeking to bring about directly or indirectly their demise,[1] this belief will naturally make them defensive and will probably affect in a negative way all their dealings with the central government. If on the other hand the central government believes that one or more strong provinces wish to demonstrate that the federation in its existing form is unworkable, and thereby in this indirect way to bring about fundamental changes or even a break-up of the federation, then that too can frustrate successful coordination. What does seem to be necessary is agreement on either side that the federation in more or less its existing form is taken for granted, unless of course one explicitly contemplates fundamental constitutional revision.

It should be emphasised that one is speaking here about the prerequisites for coordination, given a certain reasonably stable distribution of powers between the central and provincial or State governments. However, coordination is not the only value in a political system, and if one or more governments wish to change the distribution of powers radically, the re-examination of the "basic rules of the game" is bound to give rise to intergovernmental tensions if not conflict. While the point could be debated, it does appear on balance that the process of such a fundamental change should be explicit rather than covert, or at least well understood by society at large.

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1 In Australia some observers suspect that it may be Prime Minister Whitlam's intention to bring about the demise or at least the serious weakening of state governments.

A further prerequisite for successful coordination is that the number of provinces or States be not too numerous. In the United States and in Switzerland federal-State coordination is manifestly difficult, and this has no doubt affected the way in which these federations are evolving. If there were fifty or more provinces or regions in Canada the central government would, given the continuance of a parliamentary system of government and assuming the absence of any effective States House, sooner or later be certain to dominate decisions almost regardless of the amount of autonomy that was given to the provinces or regions.

Harmonising objectives is, of course, important. The difficulty is that the explicitly-stated objectives are not always the real ones or the whole story. As in all negotiations, the successful negotiator has to be able to make a fairly accurate guess about the unstated objectives of the other parties.

Ways of Coordinating

There are numerous methods which are used in Canada for coordinating federal and provincial activity. The choice of a method frequently depends on the particular phase of activity which is being coordinated. The various phases include fact finding and analysis, identification of alternative policies, choice of alternatives, preparation of legislation and regulations, administration and evaluation, and so on.

The most frequently-used mechanism is the federal-provincial consultative committee. Such a committee may be standing or ad hoc, at the Ministerial, deputy Minister (permanent head) or lower levels. There are more that 400 such committees, and they are usually chaired by the federal government representative and include representatives of all provinces, although there are a number of "regional" committees which group together, for example, the federal government and the governments of the "prairie" or "Atlantic" regions. There are roughly fifteen Ministerial committees, including the Conference of First Ministers. These committees usually meet in camera, and not less than once a year.

From the array of other techniques which are used to facilitate coordination it may be of interest to mention the following:

Joint committees of enquiry to establish basic facts and policy alternatives.

Government "White Papers", which precede legislation and form a basis for federal-provincial consultation.

Intergovernmental agreements, such as the tax collection agreements, and the hospital insurance agreements.

Advisory Committees, such as the Advisory Committee on the Health Resources Fund: a committee composed of the federal and provincial deputy ministers (permanent heads) of Health, which advises the federal Minister on allocating capital grants for hospitals and other health facilities.

Joint corporations, such as the Freshwater Fish Marketing Corporation, which includes directors nominated by the federal government and by the participating provincial governments, and an undertaking by the participating provinces to share any losses.

There has been an increasing interest in Canada lately in the question of establishing further joint federal-provincial administrative agencies which operate on the basis of powers conferred by both levels of government. Certain agricultural marketing agencies have for some time operated on the basis of delegated powers. Neither the federal nor the provincial levels may delegate legislative powers to the other but they may delegate them to a separate agency. Such an arrangement is, however, more complicated for governments than agencies established under the authority of one government - the well-known problem of determining to whom the agency is "responsible" also arises - and there have been proposals from time to time to amend the Constitution to permit delegation of legislative powers between the federal and provincial levels. (1) These proposals have, however, been controversial. Some commentators believe that delegation would give governments of the day too much scope for changing the allocation of functions set out in the Constitution. For example, one concern was that a different pattern of federal and provincial powers from province to province could develop; the feeling was that while this might have some practical advantages, the variation from place to place in the authority of federal legislators could give rise to some awkward consequences for Canadian federalism.

Specific purpose grants, of which there are a number in Canada, do have a coordinating effect, both as between the federal and provincial levels and among provincial governments. However, to the extent

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1 Such a provision was contained in the abortive "Fulton-Favreau Formula" for amending the Canadian Constitution, developed in the early nineteen sixties. See R. MacGregor Dawson, The Government of Canada, Fifth edition, revised by Norman Ward, University of Toronto Press, 1970, pp. 79 and 128-9.

than a federal government increase its conditions and its involvement in the administration of the grants the work to be coordinated increases in scope. [1] Therefore, federal and provincial agreement on the introduction of a grant with broad conditions represents coordination of the objectives or policy of the two levels in the functional area in question. If the federal government then leaves the detailed implementation to the provinces the question of federal-provincial coordination for the implementation stage does not arise.

The extent to which the coordination of objectives brought about by any particular grant is considered 'coercive' depends upon the nature of the consultation which preceded its introduction and the extent to which provincial governments felt obliged to accept the grant. It is interesting to compare conditional grants in this respect with the Joint Tasks (Gemeinschaftsausgaben) in Germany. Explicit provision for Joint Tasks was made in the German Basic Law (with the consent of the States) partly at least in order to clarify the constitutional validity of some existing federal grants. The Basic Law provides for joint federal-State planning and financing in the areas of tertiary education, regional economic development, and agriculture and coastal protection. [2] The federal role is greater than in, say, the Medicare plan in Canada;

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(1) A graphic illustration of the amount of intergovernmental activity to which detailed federal conditions can give rise is given by P.B. Wade, 'Recent Developments in Fiscal Federalism in Australia', in R.L. Mathews (ed.), Fiscal Federalism: Retrospect and Prospect, A.N.U., Canberra, 1974, pp. 58-9. Equivalent examples in Canada could probably be found, although there is a trend to fewer conditions. See also the concluding section of this paper.

(2) Article 91a. The Basic Law for the Federal Republic of Germany, English Translation 1973, Press and Information Office, Bonn.

and the degree of financial 'coercion' may not have been less. But no doubt because State agreement was made explicit through a constitutional amendment the arrangements were at the time of introduction more acceptable to the States. Since the introduction of the Joint Tasks there have, however, been complaints from the States about the operation of the scheme. There are as well other federal grants which, at the insistence of the States, involve a smaller federal role.(1)

The search, then, for coordination frequently demands considerable ingenuity to devise ways of reconciling federal and provincial objectives that preserve the freedom of action that provincial governments often insist upon. In Canada, on January 1, 1974, the federal government introduced changes in its family allowance payments. The federal plan provides for payments of $20 per month for each child under the age of eighteen. However, as a result of consultation with the provinces it was agreed that the federal payment for each child may be varied by a province provided that the average payment is $20 and the minimum $12. Two provinces have taken advantage of this option. One province has opted for an increasing amount to be paid for the second and subsequent children, using its own funds to supplement federal payments. An other province has opted for increasing amounts as children become older, without provincial supplements. A third province does not vary the federal payments but simply pays a provincial supplement in respect of the fifth and subsequent children.

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(1) For details of Federal-State financial arrangements in Germany see J.S.H. Hunter, Revenue Sharing in the Federal Republic of Germany, Centre for Research on Federal Financial Relations, A.N.U., Canberra, 1973.

(2) The National Finances, 1974-75, p. 130. Canadian Tax Foundation, Toronto, 1975.

Attempts to Institutionalise Cooperation and Consultation in Canada

The written part of Canada's Constitution, the British North America Act, dates from 1867. There is no mention in the Act of federal-provincial coordination or consultation. An attempt was made in 1971 to incorporate the following provisions:[1]

(a) A procedure for amending the Constitution which involved obtaining the consent of provincial governments, although unanimity was not to be required in most cases.

(b) A procedure for consulting with provincial governments about the appointment of judges to the Supreme Court of Canada.

(c) A provision that the federal government would not introduce a bill in relation to certain matters without giving three months' notice to provincial governments. These matters were those in respect of which broader constitutional powers were to be given to the federal government.

(d) A provision that the Prime Minister and Premiers should meet at least once a year, unless in any given year a majority of these 'First Ministers' decided a conference should not be held.

The 1971 attempt to incorporate these provisions in the Constitution failed, not because they were in themselves unacceptable to governments but because they formed part of a larger package which failed to receive general approval, the dissenting government being the Government of Quebec. Since then our constitutional review, which produced these proposals, has been in limbo.

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(1) Proceedings of the Constitutional Conference held at Victoria, British Columbia, June 14, 1971. Information Canada, 1971, Catalogue No. Z2-1971/1

During the course of the constitutional review the federal government indicated its readiness, as part of an acceptable overall package of constitutional amendments to be agreed in the context of the review, to accept limitations on its use of what in Canada is called the federal spending power.(1) The spending power derives from judicial interpretation, and this interpretation holds that the Parliament of Canada may spend from the Consolidated Revenue Fund for any purpose whatever, whether or not such a purpose falls within provincial jurisdiction, provided that the legislation authorising the expenditures does not amount to a 'regulatory scheme' falling within provincial powers. Payments may be made to persons, corporations, institutions and governments. While there is some disagreement about the extent of the federal spending power, this power has been in whole or in part the constitutional basis for federal conditional and unconditional grants to the provinces.

It was against this background that the constitutional review, which began not long after the introduction of Medicare, wrestled with the question of federal conditional grants. The federal government proposed, during the course of the discussions, that its use of the spending power to make conditional grants in areas of exclusive provincial jurisdiction should be based upon two requirements:

> "First, a broad national consensus in favour of any proposed programs should be demonstrated to exist

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(1) Government of Canada Working Paper on the Constitution: Federal-Provincial Grants and the Spending Power of Parliament, The Queen's Printer, Ottawa, Canada, 1969, Catalogue No. Z2-1969/2-2.

> before Parliament exercises its power; and secondly the decision of a provincial legislature to exercise its constitutional right not to participate in any programme, even given a national consensus, should not result in a fiscal penalty being imposed upon the people of that province."

The national consensus was to be determined by certain combinations of the results of votes in provincial legislatures, following approval by Parliament. People, not governments, of the provinces which decided not to participate were to receive grants from the federal government, in a manner to be determined in each case by Parliament.(1)

To summarise, then, there are still no provisions in the Constitution relating to coordination and consultation, but there has been evidence of a disposition to contemplate the desirability of such provisions, and there has probably been some growth in the number of provisions inserted in legislation and in the number of intergovernmental agreements. (Intergovernmental agreements in Canada, as in Australia, have more political than legal consequence.) However, coordination and consultation in Canada are for the most part carried on in a flexible, comparatively non-institutionalised manner, which is very different in this respect from, say, the situation in the Federal Republic of Germany, where such devices as the Bundesrat,

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(1) Government of Canada Working Paper on the Constitution: Federal-Provincial Grants and the Spending Power of Parliament, The Queen's Printer, Ottawa, Canada, 1969, Catalogue No. Z2-1969/2-2, pp. 40-48.

federal framework laws and the Joint Tasks committees institutionalise coordination and consultation to a high degree.[1]

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(1) For an excellent short description of the German system see Nevil Johnson, Federalism and Decentralisation in the Federal Republic of Germany, Research Paper No. 1, Commission on the Constitution, H.M.S.O., London, 1973

Areas in which Coordination is Attempted in Canada

These areas tend to be those in which both the federal and provincial levels of government have important jurisdictional and spending responsibilities. Where the provinces have exclusive responsibility and there are no federal conditional grants, there is little need for federal-provincial coordination and consultation (although there may be a need for interprovincial consultation). For example, in the field of primary and secondary education the federal government has no role to speak of, and in post-secondary education the only condition attached to federal grants is that the money be spent on the operating costs of post secondary educational institutions.

Similarly, provinces are not consulted, except in a very general way, about exchange rate and monetary policies, nor about defence policies. Canada has in any case usually had a floating exchange rate and no foreign exchange controls. Provinces are, however, increasingly being consulted about international trade policy and control over foreign investment in Canada.

Specific functional areas in which coordination and consultation are attempted include the following:

(a) Taxation

- The federal government collects provincial personal income tax in all provinces except Quebec, on the condition that provinces use the federal income tax base (and laws) and express their tax as a percentage of the federal tax. The Quebec tax law is essentially the same as the federal law.
- The federal government also collects the corporation income tax in all provinces except Quebec and Ontario. All provinces use basically the same tax laws.

- Prior to bringing in legislation a few years ago to reform personal and corporate income taxes, the federal government established a Royal Commission and subsequently published a White Paper which formed the basis for prolonged consultations with provincial governments and with other interested parties.

(b) Borrowing

- Provinces borrow in domestic and foreign financial markets on their own behalf. There is some consultation, notably before provincial budgets are brought down, about borrowing intentions. Provinces are sometimes asked to restrain their borrowing in foreign markets when in the opinion of the federal authorities the exchange value of the Canadian dollar is too high, but exchange controls are imposed only in rare and temporary situations of more general application.

(c) Fiscal and economic policy

- There are annual pre-Budget consultations, as well as other meetings of federal and provincial Finance Ministers.
- Some provinces have, however, expressed the desire that consultations about economic policy should be more extensive.

Other specific functional areas in which coordination is attempted include:

(d) Regional (i.e. provincial) economic development and foreign investment

(e) Transport, including location of airports, harbours and new railway lines

(f) Health services

(g) Income security and social services

(h) Energy pricing, and taxation of energy and other natural resources

(i) Offshore oil resources

(j) Employment and immigration services

(k) Agriculture

(l) Consumer affairs

(m) Protection of the environment

(n) Communications, including television broadcasting.

It is widely recognised that with the growth in the range and complexity of government activities, and with the growth in the size of the public sector relative to national product, it is becoming increasingly difficult to separate one policy or functional area from another. Agriculture, transport, energy, the environment - everything these days seems to be interrelated. This lies behind both the growing interdependence of federal and provincial activity, and of the various activities within each level of government.(1) There is some evidence in Canada that this

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(1) As Professor Spann notes, "One may argue (as Professor Braibanti has) that 'cooperative federalism' is only one symptom of the growing interdependencies of modern societies, interdependencies that will inevitably defeat all simple-minded efforts to sort them out." R.L. Mathews (ed.), Intergovernmental Relations in Australia, Angus and Robertson, Sydney, 1974, p. 37.

inseparability of policy areas is requiring federal-provincial consultation and coordination to be more broadly-based, that is, to take in wider and wider areas of activity within the ambit of any given attempt to coordinate. For example, federal and provincial governments have been consulting about the wide area of 'income security and social services', a term which takes in such matters as pensions, family allowances, sickness and accident insurance, unemployment insurance, occupational training, blind and other disabled persons allowances, assistance to single parent families and to persons unable to work, and so on. Similarly, in the field of urban affairs the number of relevant policy areas which are brought into the discussions has been widening.(1) As the circles get wider perhaps we shall come nearer to some sort of explicit agreement about the ordering of national priorities, but we are still a long way from this point; and whether such an eventuality is desirable could long be debated by political scientists.(2)

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(1) The introduction by the Government of Ontario of a relatively few 'super-Ministers' to coordinate policy in certain related functional areas was probably motivated at least in part by the difficulties which arise from fragmenting policy decisions among the usual number of different government departments.

(2) For example, in Switzerland where 'direct democracy' operates, people would probably be indignant if governments sought for themselves such a role. And, as Professor Spann says (op. cit., p. 36), there is the more general proposition that 'Some people don't think it matters much if policy fragments itself by being pressured and called to account in many different ways, some people think it matters a great deal.'

As well as evidence of a trend to widening the area of consultation there is also evidence of a trend to begin the process sooner. The typical pattern of the past has been that governments do their fact-gathering, analysis and choice of alternatives independently, with consultation coming only afterwards. There is now more of a disposition for governments to carry out these initial stages of the policy development process jointly, although it will probably be some time before this practice becomes general.

Some Problems

Federal-provincial coordination and consultation in Canada are, of course, not without problems. The more important of them are as follows:

(a) Legislators at both the federal and provincial levels are frequently asked to approve a negotiated 'package' that it would be difficult for them to modify. This tends to strengthen the role of the executive and weaken the role of the legislator.(1)

(b) Consultation takes a great deal of time and effort. The less populous provinces with small staff often find it difficult to participate fully in all the consultation which is going on at any given moment.

(c) The time available for consultation on any given question may be short. The end of the policy development process is sometimes rushed, leaving inadequate time for consultation. This problem can be avoided when it is possible for joint consultation to take place at an early stage in the policy development process; but there will always be situations in which a government wants to take some action or other and where the time factor imposes constraints.

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(1)

'It is significantly harder and a much more serious matter for an opposition party to try to change a system of family allowances when to do so can be said to challenge not only the position of a single federal or provincial government, but the joint position of all such governments and perhaps national unity as well.' J.F. O'Sullivan, Some Key Federal-Provincial Issues in the 1970's, (Notes for Remarks at the Business Outlook Conference of the Conference Board in Canada, Winnipeg, April 3, 1974, pp. 16-17.)

(d) Provincial governments are sometimes frustrated by the fact that certain decisions of importance to them are in the hands of statutory bodies set up by federal legislation rather than in the hands of federal Ministers. Two such bodies in Canada regulate freight rates and the transmission of energy products via pipelines and other means. The federal government has acted recently to extend the jurisdiction of the Minister of Transport vis-à-vis one of these statutory bodies.

(c) Occasionally, although not often, the fact that a different party is in one or more provinces from the one in office in Ottawa makes coordination and consultation more difficult. However, factors other than 'party politics' are more important in federal-provincial relations in Canada. In the Federal Republic of Germany, where party politics play a major role, the present control of the Bundesrat by opposition State governments does impose a restraint on the federal government; but some would argue that this is part of the mechanism which ensures that no really major new policies can be undertaken in Germany without a broad consensus, and with at least the tacit acceptance of the Opposition. It is noteworthy that the major constitutional changes in recent years affecting federal-State relations in Germany were approved during a coalition at the federal level of the two major parties. Similarly, 'party politics' in Canadian or Australian federal relations need not necessarily be a bad thing; they are, after all, built into the processes of Parliament.

Some blurring of responsibility for decisions may arise as a result of coordination and consultation, but this has not been a major problem in Canada. On the other hand, worry about the principle of ministerial responsibility has been a deterrent in one or two cases to the setting-up of joint administrative agencies.

Even here, however, there were other factors at play.[1]

The difficulties listed above are usually minor compared with the difficulties which arise in reconciling the substantive differences of view which are held by the various governments. Serious differences of view arose, for example, as a result of the effects on energy prices of recent world increases in the price of oil, notably because western provinces possessed valuable oil and gas resources and eastern provinces were obliged to buy these resources from western Canada or from other countries. Consultations about the sharing of tax revenues are always difficult. At the present time there are problems in reconciling federal and provincial points of view about the whole field of communications,including such matters as radio and television broadcasting.

These differences of view on important matters, which are unavoidable in a federal system but which catch the headlines, sometimes overshadow the considerable substructure of coordination which goes on daily between the federal and provincial levels of government. There are thousands of such daily contacts and most of them are constructive and fruitful.

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(1) The discussion of the concept of responsibility by Professors Reid and Spann is most germane to the Canadian as well as to the Australian situation. Professor Reid rightly asks: 'Is (responsible government) sufficiently strong or meaningful as a principle of political behaviour for it to be used to determine administrative arrangements in the federation in the future?' R.L. Mathews (ed.), Intergovernmental Relations in Australia, Angus and Robertson, Sydney, 1974, pp. 23-42.

COORDINATION WITHIN GOVERNMENTS

The federal and provincial governments in Canada all have arrangements for coordinating their individual approaches to federal-provincial relations, although some governments have institutionalised these arrangements more than others. In each government the Cabinet is, of course, the primary coordinating mechanism for all matters, including federal-provincial relations. In most governments the Prime Minister or Premier is the Minister responsible for federal-provincial relations, and this is the case with the federal government, but in a few there is a seperate Minister who may or may not hold another portfolio.

Ministers are supported in most cases by special groups of officials who 'coordinate ' relations with other governments. The Quebec Department of Intergovernmental Affairs was the first to be formed in Canada. At about the same time the federal government began to give to the Cabinet Secretariat a more clearly defined mandate to coordinate its relations with the provinces, and in 1968 a special division headed by a Deputy Secretary to the Cabinet was established. Before the mid-sixties coordination was largely taken care of by departments of Finance, whether in Ottawa or the provinces. The mid-to-late sixties were, however, characterised by a raising of the temperature in federal-provincial relations. For example, the relations between the government of Quebec's Daniel Johnson and the government in Ottawa were frequently tense. Reference has already been made to the Medicare issue, and to the constitutional review which was launched essentially at the insistence of the Quebec government. This raising of the temperature no doubt reinforced other reasons for putting coordination on a more organised basis.

The Federal-Provincial Relations Office is now headed by a full Secretary to the Cabinet (there are now two such Secretaries).

The Office attempts to coordinate the federal governement's approach to relations with the provinces, and to some extent it acts as a lobby with the departments for greater and earlier coordination and consultation with the provinces. It does not attempt to involve itself in all federal dealings with the provinces because such dealings are too numerous. It concentrates instead on major issues, particularly those of major political, constitutional or financial importance. Many major issues result form the introduction of new policies or legislation, and the Office is well placed to have an input into the development of new policies from an early stage.

With regard to those major issues the Office does not usually play the leading role in consultations with the provinces. This role is left to the department responsible for the functional area in question.

Among the various committees of Cabinet is a Federal-Provincial Relations Committee, chaired by the Prime Minister. This committee is served by the Federal-Provincial Relations Office.

CONCLUSION

The particular pattern of coordination which emerges in a federal country depends on the characteristics of the political system as a whole. In Canada, there has developed a flexible, largely non-institutionalised pattern of coordination , heavily dependent on consultation between the executive branches of the federal and provincial governments.

During Canada's constitutional review in the years 1968 to 1971, which followed a very difficult period in federal-provincial relations, an attempt was made to institutionalise some aspects of coordination and consultation, notably consultation about the introduction by the federal government of new specific purpose grants in areas of provincial jurisdiction. While no constitutional amendments were made, the federal government has since the introduction of Medicare in 1966 introduced no major specific purpose grants in areas of provincial jurisdiction. This is an illustration of the importance in Canada of political constraints on the exercise of federal constitutional jurisdiction.

There is some evidence that the process of consultation and coordination in Canada is beginning at an earlier stage - at the fact-finding stage, for example, rather than when policy proposals are fully developed - and that the number of matters included within the ambit of a given attempt to reconcile federal and provincial objectives is widening. The functional area of 'income security and social services' is the best example of these two tendencies. Canada is still a long way from explicit agreement between the federal and provincial levels as to the ordering of all national priorities and the relative claims of the two levels to financial resources. Not everyone

would, however, be of the opinion that such explicit agreement is desirable even if practicable.

A number of factors, few of them peculiar to Canada, have resulted in recent years in an exploding volume of requirements for coordination. In order to maintain effective coordination in the future it will be necessary not only continually to refine our methods but also to make a conscious attempt to control the volume of required coordination. Such control could be brought about, for example, by a clearer understanding of the dangers and difficulties which arise from a continuing increase in the size of the public sector as a whole; by simplifying the ways in which governments deliver services to the people; and by governments at both federal and provincial levels confining themselves where they have the choice to the tasks they can do best.

EXCERPTS FROM

SURVEY AND ASSESSMENT OF CURRENT ISSUES IN FEDERAL-PROVINCIAL RELATIONS

by

The Federal-Provincial Relations Office
Government of Canada
November 1976

The following are excerpts from the federal government's paper on federal-provincial issues based entirely, with the exception of a few bridging phrases, on the original document. The text was prepared by the FPRO as part of a seminar on federal-provincial relations held in Ottawa, 1976.

FEDERAL-PROVINCIAL ISSUES

This paper attempts to present an overall view of current federal-provincial issues; an explanation of how such issues arise, their underlying causes and their inter-relationships, and information on how governments take positions and strive to resolve issues.

Why and How Issues Arise

Governments both initiate action and react: in their "active" role, they follow a political program (which may include a wish to show leadership), and in their reactive role, they have to respond to political pressures, domestic and foreign.

In a federal system, the action which a federal or provincial government wishes to take frequently impinges on the other level of government, on its responsibilities and resources. This would be so even if the responsibilities of the two levels of government were clearly demarcated, and if each level levied different taxes. In Canada, the jurisdictional dividing line is not clear in some policy areas (e.g. economic development); and the federal government may, to a certain degree, through the use of "the spending power", intervene in what are primarily provincial areas of jurisdiction. Consequently, a federal or provincial government has a fair amount of latitude in interpreting its responsibilities. Also, the two levels share a number of tax fields. As a result, the extent to which actions of one level impinge on the other level is increased.

Action that impinges may lead to a dispute, to the creation of a federal-provincial "issue", minor, major, or somewhere in between. The affected level of government may feel it stands to lose capacity to carry out its functions or political program (e.g. it stands to lose jurisdiction or revenues) or that the action taken will in some other way make the achievement of its goals more difficult.

Because the sharing of fiscal resources affects the capacity of governments to exercise jurisdiction on its constitutes a more or less permanent issue.

Generally speaking, one or more of the following factors underlie any given issue:

a) jurisdiction
b) fiscal resources
c) differing objectives (which may, but need not, reflect political ideology)
d) implementation (disagreement about means)

With regard to c) and d), differences often arise simply because the federal government may be taking a position which attempts to reflect the interest of the nation as a whole, whereas a provincial government will, naturally, usually be seeking to advance or protect the particular interest of the province. Positions do not always give rise to this kind of conflict, but they frequently do.

What precipitates a federal-provincial issue? It may be any one of a number of things, such as action by the federal or a provincial government, by a pressure group, by a foreign country or group of countries (e.g. the OPEC increase in the price of oil), by a discovery of mineral or oil deposits (e.g. offshore), and so on. Often it is difficult to identify the specific event which precipitated an issue; however, at some stage a federal or provincial government will take action or adopt a position. Many federal-provincial issues arise from an action taken or contemplated by the federal government. There are at least four reasons for this:

a) Since the Second World War, most of the pressure for action by governments has been in the area of what may be called "social and economic justice", whether this justice be for individuals or regions. This is a reflection of the secular trend, which really got under way during the First World War, for greater equality among individuals, regions and nations. Much (but not all) of this pressure is focussed on central governments. In Canada, the area of "social and economic justice" is one shared by the two levels of government. Central government action in this area inevitably impinges on the provincial governments. This action has taken the form both of greater direct income transfers (e.g. family allowances) and of the financing of social services (e.g. Medicare). Provincial government action to meet similar pressures does, on the other hand, usually have only local effects (these local effects are important in provincial-municipal terms, e.g. New Brunswick's "Equal Opportunity" legislation, but they do not usually give rise to a federal-provincial issue).

b) For a number of years, Canada has had an unacceptably high level of unemployment. For one reason or another, overall monetary and fiscal policies, of a kind which do not explicitly discriminate among regions, have been unsuccessful in bringing down the rate. Consequently, the federal government has turned to other, direct measures, such as regional economic development and specific programs to stimulate employment. These other measures involve the federal government, more than do the overall "indirect" policies, in relations and disputes with the provincial governments.

c) Since the Second World War, most of the fastest-growing source of revenue (the personal income tax) has accrued to the federal government. Federal revenues have, for the most part, been more "elastic" than provincial revenues, that is, they have risen faster in relation to incomes and GNP. This made it easier for the federal government to respond to the pressures mentioned in a) above, and to undertake the expenditures required by b).

d) There are several areas where the federal government for a number of years was either not required or chose not to pass legislation, thus leaving a kind of vacuum which was filled by the provinces, e.g. certain aspects of interprovincial trade, securities regulation, and interprovincial transmission of electricity. The development of a more integrated Canadian economy and other factors have combined to exert pressure for a larger federal role.

Recently, party because of a new federal policy and reduced federal resources, it has become more common for provincial government action to give rise to a federal-provincial issue. Four reasons may be mentioned.

a) The federal government has adapted its use of the federal use of the spending power to take account of provincial objections.

b) Federal capacity to launch new programs and generally to spend money has been more limited for several reasons, including:

- the fact that the major shared-cost programs introduced in the fifties and sixties turned out to be themselves "elastic" in relation to GNP.

- indexation of the personal income tax reduced somewhat (but not, initially, as much as expected) the growth in the yield of this tax and the growth of federal revenues.

c) Provincial governments have, as the role of governments everywhere has increased, ventured into new areas of activity and have sometimes pushed more on the border line of their responsibilities. In both cases, there have been "spillover" effects for other provinces or the nation as a whole and consequently, a federal-provincial issue has arisen, eg.

- the issuance of provincial exploration permits for oil and gas exploration in various waters off Canada's coast,

- Cable TV (licensing by Quebec in competition with the federal Canadian Radio and Television Commission)

- Ontario sales tax relief, initially confined to North-American-made autos and thus causing concern to governments of foreign countries which export autos to Canada,

- Purchase by Alberta of Pacific Western Airlines, involving questions of federal jurisdiction and a dispute with British Columbia,

- Potash production taken over by Saskatchewan, causing concern to the United States and US investors.

d) At the same time, the provincial share of government revenues has increased, and some provinces have benefited from major increases in natural resources prices.

International developments may precipitate or sharpen a federal-provincial issue, e.g. world-wide inflationary trends and the oil crisis; and they may of course sometimes bring about profound changes in federal-provincial relationships, e.g. World War II.

There seems to be a trend to an increasing number of issues between the two levels at any given point in time, reflecting enlarged responsibilities of governments, greater inter-dependence and, some would say, the increased political and financial strength of some provincial governments in relation to that of the federal government.

How Governments Take Positions

This process is important because it results in a definition of what remains to be resolved through federal-provincial agreement.

The government initiating action which impinges on the other level will, more often than not, be at least partly aware of what effects on the other level its action will have, and this will influence the nature of the action taken and the decision about what consultation there should be. This stage represents an important opportunity for making decisions which will minimize federal-provincial conflict and maximize cooperation. Serious federal-provincial disagreemen can sometimes be avoided altogether. The actual decisions which are taken will be determined by factors almost too numerous to mention, but they include (not necessarily in order of importance):

- the general stance of the government in question regarding cooperation with the other level
- the views about cooperation of the Minister and of his or her officials, particularly their judgement about the extent to which the success of an initiative may depend on cooperation from the other level
- the legal position regarding jurisdiction
- interrelationships with other, already outstanding issues can soften or harden an initial position. (A soft line may be taken if delicate negotiations on a related or even non-related issue would be prejudiced by a hard line.)
- the likely reaction of the legislative body concerned (especially if the government is in a minority position) and of the public at large.

The level of government affected by the action will in its reactions be guided by pretty much the same set of factors as are listed above.

There are very few government actions today that do not affect more than one policy area. Consequently, in order for a government to take a position a certain amount of internal coordination is necessary, and this is usually more difficult if the government in question is a large one. The principal vehicle for coordination is the Cabinet. However, in recent years, several governments in Canada have thought it useful to establish a group of officials, and sometimes a separate Minister, whose task it is to assist Cabinet in the task of coordinating the actions and reactions of the government in question vis-à-vis other governments in Canada. This function includes advising on such things as:

- general stance regarding cooperation,
- interrelationships among issues,
- ways in which objectives may best be realized in dealing with the other level (including definition of positions),

- methods of consultation.

In the federal government, it is the Federal-Provincial Relations Office, responsible to the Prime Minister, which has the role of advising on coordination of the government's relations with the provinces. It must be stressed that the role is advisory and that neither the Office, not indeed the Prime Minister, except through the ordinary processes of Cabinet government, can impose their views. While the Office may be heavily involved in helping the development of a federal position and in preparations for federal-provincial discussions, it only rarely participates directly in Departmental negotiations with the provinces, and even more rarely leads the negotiations when it does participate.

How Issues Are Resolved

Federal-provincial issues are generally not a kind that can be resolved by an appeal to and a decision of the courts. Even a court decision may leave a part of an issue unresolved, as did one Supreme Court decision favouring federal jurisdiction over offshore oil deposits. Even though the possibility of court action is an important backdrop to many issues, most often issues are resolved through the political process, and this manifests itself in turn through the adoption by governments of modified positions.

The considerations which guide governments in adopting modified positions are broadly similar to those which guide them in adopting initial positions. However, the process is aided by federal-provincial consultation and negotiation, and by what may, for want of a better word, be called transmutation, the continual adjustment of positions which is brought about by influences external to intergovernmental consultation. This process comes into play as soon as a government positions has been made public. From that time on, public reaction and unfolding events of all kinds begin to bear on the adopted position.

The process of resolving issues through intergovernmental consultation is, in the Canadian federal system, a more important part of the overall political process than in other federal systems, given that we have an appointed rather than an elected "States House" forming part of the central legislature. As a result, a sort of consensus is developed among regional interests through the consultation process as much as and sometimes more than through the apparatus of the central government and legislature.

This consensus, like any other consensus, does not require unanimity. Indeed, in federal-provincial negotiations, positions are rarely modified to the point where at the end of the day there is complete agreement. Where federal initiatives or responsibilities are involved, the federal government frequently has to modify its initial position to one that does not satisfy all provinces by that is acceptable to most.

It is because total agreement is comparatively unusual that jurisdiction is ultimately of considerable importance. The government that has the jurisdiction must ultimately make the final decision as to what action will be taken.

Finally, it should be remembered that each government has its own set of priorities. What is urgent and important to one government is usually less pressing and of less interest to another. This obviously affects the handling and resolution of issues.

It is plain that serious disagreements between governments in Canada on some matters cannot be avoided. These disagreements are indeed one manifestation of the workings of the Canadian political system. The fact that there is tension is to some extent an indication of the vitality of governments.

Minister of Justice and
Attorney General of Canada

Ministre de la Justice et
procureur général du Canada

NOTES FOR AN ADDRESS

BY

THE HON. RON BASFORD, Q.C.

MINISTER OF JUSTICE AND

ATTORNEY GENERAL OF CANADA

TO THE 59TH ANNUAL MEETING OF THE

CANADIAN BAR ASSOCIATION

OTTAWA, AUGUST 29, 1977

Mr. President, it is a great pleasure for me as Minister of Justice and as your Honourary President to welcome my fellow members of the Canadian Bar Association and their distinguished guests to the nation's capital. May I welcome in particular those Commonwealth Law Ministers who have come to Ottawa following our successful meeting in Winnipeg last week.

I want to express real appreciation to you, Mr. President, and through you to your Executive and staff for your assistance over the past year.

It was only within the space of a few short months after your last meeting in Winnipeg that the election of the Parti Québecois confronted Canadians with the reality of a provincial government dedicated to the break up of Canada.

To some few Canadians, these developments appear to be a matter of indifference. For one noted Canadian historian, the outcome of the November 15 vote seems proof of the failure of the "politics of appeasement". His

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proposal that we sever all ties with Quebec and consign it to the "stagnant economic backwater of independence" reflects a serious misunderstanding of modern-day realities. It reflects a pessimism that is not shared by many other Canadians.

Your Convention's two themes "People and Government" and "Canada Today" are particularly appropriate. I want to congratulate you, Mr. President, and the Convention organizing committee for providing Canadian lawyers with an opportunity to focus on these issues.

While the Bar has no monopoly on the question of national unity or its solutions, the profession does possess many and special talents necessary to find a new sense and spirit of Canadian unity.

As lawyers you will be inclined to concentrate on legal mechanisms and formulae -- the plumbing of the constitution. I would hope you will avoid that natural tendency and rather examine the foundations of a desirable Confederation. More specifically, assess your own attitudes towards Canada and towards your fellow Canadians.

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Each region of Canada has special cultural, economic and social concerns which must be recognized and respected if we are to develop a nation which at the same time reflects a proper diversity of regionality and a continuing unity of purpose. You are all familiar with these differences and concerns. [The eastern maritime region has its distinctive cultures and deep-rooted traditions. It also suffers a chronic lack of industrial development and consequent high unemployment. Ontario equally has developed its own cultural patterns and, as a highly industrialized region is concerned about a continuing sufficiency of export markets for its products. The Prairies again have a variety of distinctive social and cultural values to preserve, and fear that they are viewed as but a raw resource base for the industrialized east. British Columbia, shielded from the rest of Canada by the mountains, has developed still other lifestyles and values, and feels remote and under-represented in the national institutions of government. The Territories have their distinctive native Canadian cultures and their frontier values, and are suspicious that they will become but a new frontier ripe for raping by the South. Québec, with its predominantly French language and culture, and its burgeoning economic base, feels its people are strangers in their own province, let alone in the rest of Canada.]

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The basic question is how do we as a people and a nation respond to them. What are the attitudes you want reflected in your country concerning the respect and dignity of the individual? The fair sharing of our nation's wealth? The advantages of having different peoples and cultures? The accessibility and responsiveness of government? The protection of fundamental rights and freedoms, including the right to live in one's language and the freedom to move across the country as full citizens?

The very choice of your convention theme is evidence of your concern. But, unless you first accept the fundamentals of Confederation, discussion of constitutional reform will be for naught. The power of a constitution lies not in its written words, but rather in the commitment to the beliefs underlying those words.

Thirteen years after Confederation, Sir John A. MacDonald stated: "Whether (Canada) was conquered or ceded, we have a constitution now under which all ... are in a position of absolute equality, having equal rights of every kind of language, of religion, of property and of person. There is no paramount race in this country; there is no conquered race in this country."

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Ten years ago, Prime Minister Lester Pearson said of modern federalism that it "is a system which enables small and exposed communities to combine into states for their mutual well-being and development - states which are large enough to exist and to flourish in today's world, while at the same time preserving the integrity of their member communities."

Because of our attitudes, we have not achieved the spirit of Sir John A. MacDonald. I am convinced, however, that the reasons that brought us together into a federal union 110 years ago remain no less compelling today.

The basic question that has always been with us is what kind of federalism will best encompass and accommodate the economic and social diversity of our several regions, the duality of our language, and the multiplicity of our cultures to allow us to forge a new Canadian bond.

I suggest that one of the foremost requirements is to maintain and strengthen our commitment to the sharing of the costs and benefits of Confederation. No union can

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long endure where great disparities of income and of economic opportunity exist among different regions and individuals. A national government equipped with the necessary constitutional powers and fiscal resources has the responsibility and duty to assure that the various regions share the benefits of nationhood.

Canada's industrial and natural resources are not evenly spread across the country. Head offices are centered in one part of the country. Other regions have a manufacturing base. Others are rich in resources. Are revenues derived from these assets to be spent in only one region? Are you prepared to see some sharing of your corporate taxes, and your resource revenues? Are you ready to have part of your personal income taxes spent on equalizing opportunities? If not, then we cannot succeed in what must be one essential attribute of nationhood.

Secondly, it is essential that the responsibilities of our governments should be allocated in a way that will best serve the interests of the people to whom they are accountable. The distribution of power and responsibility between governments cannot be fixed immutably, but must evolve over time to meet changing conditions and circumstances.

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The federal government has repeatedly emphasized its willingness to join with the provinces in considering more fundamental changes in the division of constitutional responsibilities between levels of government. In his letter to provincial Premiers last January, Prime Minister Trudeau said,

> "... it will be essential for all of us to be willing to meet the challenge ... in as open-minded a way as possible consistent with our responsibilities, unburdened by commitments to any pre-conceived outcome, and constrained only by the dictates of our sense of what will best serve the interests of Canadians in all parts of Canada."

In the next few days, you will be told that the simple answer, and the sole key to strengthening national unity, i a substantial transfer of jurisdiction from the federal government to the provinces. This is subject to critical examination.

Canada is already one of the most decentralized countries in the world. A federation would lose all meaning to individuals if the sole function of the central government were to act as a funnel for the collection of taxes and the making of transfer payments to provinces.

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The federal government, to the extent that it is better suited than the provinces to provide certain services - maybe one or two of which are not within its jurisdiction today - should retain a strong presence in Confederation. Is it not virtually impossible to run a Canadian common market, a monetary system or to be strong in international markets without national economic levers? The provinces, on the other hand, will always be in a better position to provide other services some of which may now be carried out by Ottawa.

As this process develops accommodations and adjustments must be made. No one in any part of Canada would vote for a rigid adherence to the status quo. But what is clear is that the negotiation of these adjustments and accommodations must be made in the interests of the citizens and of strengthening our Confederation.

Most people, I am convinced, would prefer to see these issues debated by politicians and governments, not on the basis of the personal aggrandizement of themselves or of their governments, but on the basis of how existing and proposed services can be most effectively and efficiently delivered - without duplication or waste.

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No level of government has a monopoly on good administration. Rather than concentrating on seeking more powers, governments would do well to spend more time on assuring that the powers they now have are exercised well. On the national scene, this requires that our institutions - the Supreme Court, the Parliament of Canada, the federal government and bureaucracy - assess themselves and assure that they are in fact effectively seen as national institutions, responsive to the needs of a diverse modern state, fully reflecting the aspirations of Canadians from all regions.

The third value that is essential, indeed critical, to strengthening the foundations of our nation has nothing to do with attributing powers to governments. Quite the contrary. Surely if there is one essential of our society that must be beyond question, it is the recognition of basic individual civil liberties and the assurance that these are guaranteed to each individual wherever the person resides, free from interference by government.

Provinces have passed human rights legislation. Canada has The Bill of Rights approved in 1960 and the Human Rights Act enacted last month. All of these are subject

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to change at any time. Important as they are, they are no substitute for a comprehensive Charter of Fundamental Rights and Freedoms, entrenched in the Constitution, which has equal application everywhere in Canada.

Fourthly, the economic strength of a federation depends upon the free movement of goods across provincial boundaries - a common market. This concept has been buttressed by constitutional provisions and jurisprudence but, equally, do we not have to assure the free movement of people within the federation?

The Supreme Court of Canada in Winner vs SMT (Eastern) Ltd. and Morgan vs The Attorney General of P.E.I. addressed this concept relative to two very particular fact patterns. It is essential that we strengthen the ability of Canadian citizens to move throughout the length and breadth of this country without unfair impediment of their opportunities. Similarly, no law of any government in this country should be permitted to limit the freedom of movement of any Canadian, be he a Prime Minister, Leader of the Opposition, elected representative or any other citizen to speak. Canadian citizenship, if it is to mean anything, cannot suffer geographical limitations in issues that go to the very core of nationhood.

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There is, finally, a fifth value closely related to, but distinct from these civil rights which - if anything - is even more fundamental to the restoration of national unity. I refer, Mr. President, to the urgent need to secure the linguistic rights of our country's two founding cultures.

The francophone, no less than the English-speaking Quebecker, will not and should not tolerate the indignities of an inferior linguistic status in his country. The use of French or English by what may be a numerical minority in certain parts of the country is not a privilege, a concession or something to be bargained or negotiated. It is not a reciprocal right or a minority right. It is, quite simply, the fundamental right of a Canadian which stems from the very nature of Canada.

This does not require all anglophones outside Quebec to learn French nor, indeed, all francophones in Quebec to learn English. It does require that, where numbers warrant, Canadians should be able to communicate with their government in the language of their choice, and should be able to educate their children in the language of their choice. Equally, the linguistic rights of Canadians before our courts must be preserved in Quebec and strengthened in the rest of Canada.

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Some would have us believe that the promotion of the equality of the French and English languages is a divisive issue. I do not believe that, but whether it will, depends on your attitude. National unity will not be achieved solely by the recognition of official language rights. Without it, however, we will end up with something less than one Canada.

The Premiers have promised action for linguistic educational rights across Canada. But no Premier will implement equal rights in education without public support - support within his own province - not some other. Unless provincial publics indicate their willingness to develop school facilities in both official languages where warranted, the job will not get done. Are the lawyers here from British Columbia or elsewhere prepared to return home from this convention ready to call for action?

This must be done. But the provinces' jurisdiction in education as in property and civil rights does not and should not preclude government entrenching in the constitution these basic rights, a measure which the national government feels must be taken. Such a guarantee is really the essence of this country, and was in my view the spirit of the 1867 Constitution.

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Mr. President, the developing strains on Confederation have now reached the crisis point. As I indicated at the outset of my remarks, the critical challenge confronting us also presents us with a rich opportunity to forge strong and enduring new bonds of national unity. I am convinced that in the face of crisis Canadians can muster the will -- as we have many times in the past -- that is essential to overcome it.

Clearly, governments must be and are prepared to lead, and in a free society the kind of nation we have, and how we solve our problems, will be determined by the political process. But that process can only respond to the will and to the attitude of individual Canadians.

In the final analysis the outcome will depend on whether the Canadian people themselves will accept the common purpose that lies at the root of nationhood. As was noted in "A National Understanding":

> "This means, above all, that Canadians must be willing to live together in a country of differences, accepting, even rejoicing, in those differences. It means that Canadians must accept and, whenever they can, create the conditions in which those differences are welcomed and can flourish, even if it means sacrificing some of their own convenience or accommodating their own point of view to that of others. Only individuals, not governments, can make these kinds of choices."

If you leave here convinced of that, you will have had a successful convention.

A challenge to the spirit of Canadians

Notes for an address to the Convocation,
Dalhousie University, May 12, 1977

by
Gordon Robertson,
Secretary to the Cabinet
for Federal-Provincial Relations

It has long been the custom of our clergy, to search for an appropriate text on which to base the Sunday sermon designed to produce a measure of moral uplift for their flock. I do not plan to deliver a sermon but I do want to talk about a serious subject: our country, which is today in grave peril. I want also to talk about the only thing that I think can, in the long term, save the Canada that we know and love. I believe that that one thing is a degree of greatness and generosity of spirit on the part of all Canadians that we have not shown in the past and are not showing now. My belief is that unless We show it, nothing else we do will be sufficient to avoid, sooner or later, the departure of Quebec and the shattering of our dream of Canada "from sea-to sea". And since, I suppose, this proposition finds me moving into the area of man's attitude toward man, it is not inappropriate for me too to start with a text.

In 1863, the United States of America was locked in a civil war waged between a part of the country that wanted to leave the union and the rest of the country which was determined that the union should be preserved intact. In his Gettysburg address Abraham Lincoln referred to the origins of the United States as "a new nation conceived in liberty and dedicated to the proposition that all men are created equal". He went on to say that they were then "engaged in a great civil war testing whether that nation, or any nation so conceived and so dedicated, can long endure". He called for a new dedication to the purposes underlying the union so that "this nation under God shall have a new birth of freedom" and that the high ideals on which it was founded would not "perish from the earth".

Unlike the United States at its origins, we, in Canada, had no Thomas Jefferson in 1867 to provide an eloquent expression of ideals for the Confederation that was then created. We have suffered ever since from that lack. But our union was produced, nonetheless, out of a situation of crisis and danger in which both the "Canada" of that day - the Ontario and

Quebec of today - and the Atlantic colonies saw a need for union in order to achieve purposes greater than they could achieve in their separate weakness and isolation. But both the Atlantic colonies and the part of Canada that had, before 1841, been "Quebec" or "Lower Canada" were determined that the union would have to be one in which they were not submerged and in which their identity would not be lost. So far as the French of Canada were concerned, the essential thing was that they should remain French. There were nearly one hundred thousand French-speaking Canadians outside Quebec at the time of Confederation - in the Maritime colonies, in Ontario and in the west. Provisions in the Manitoba Act of 1870 about language and denominational education, as well as passages in the Confederation debates, bear witness to the concept some Canadian leaders of the day had of a country in which the two linguistic communities, English and French, would exist together - outside as well as inside Quebec. As George Etienne Cartier put it in 1865, speaking for the French Canadian element supporting Confederation: "We could not do away with the distinctions of race. We could not legislate for the disappearance of the French Canadians from American soil...".

If the United States was dedicated to the proposition that "all men are created equal", many French Canadians believe that we had, among our purposes, the proposition, probably little understood, that two linguistic communities could live together in one country with each respecting the rights, the dignity and the full existence of the other. A major part of our problem today is that, while many French Canadians understood the underlying proposition in that sense and lived up to it in Quebec, where they had the majority, few English-speaking Canadians so understood it and we did not live up to it where we had the majority. Our history for one hundred years in the provinces other than Quebec and in the national scene belied the proposition of equal co-existence - or even of co-existence - of two cultural groups.

At this time of national crisis, we must try to see our history with the eyes of many French Canadians or we cannot hope to understand the bitterness that we see in Quebec today. Nor can we hope to produce the changes that will reduce that bitterness and allow this union of Canada to "have a new birth" and to endure. New or modified constitutions, more delegation of powers, more flexibility in economic policy - all of these are mechanics: important mechanics, but futile if we do not

get at our root problems. Those root problems are not problems of constitution, of legislative powers or even of economics. They are problems of human dignity and of failures - some past, but some present - in spiritual generosity. French Canadians found for years that we, in "English Canada", did not have the generosity to treat them as an equal, self-respecting community sharing all parts of our country and all parts of our national life. They found that we did not even want to treat them with dignity and respect within the confines of Quebec.

How do the relevant parts of our history look to French Canadians? When I went to Quebec in 1967 to spend about six months there, I found that a number of things were very important to Quebecers that I knew little about - and had attached small importance to. An early series of events after Confederation amounted to a betrayal in Manitoba and on the Prairies of the expectation that the west would be as open to the French as to the English culture. The hanging of Louis Riel in 1885 for having tried to protect the interests, cruelly neglected by Ottawa, of the French-speaking Metis of the west was the first devastating blow. The bitterness that caused can hardly be imagined. It was still sharp when Manitoba,

in 1890, repudiated constitutional guarantees and made English the sole language of the legislature, the law and the courts. The use of French in education dwindled as few French-speaking came to what had become a rather hostile place. In the Northwest Territories, as they were left after Manitoba was established in 1870, the population had been almost evenly divided between those who spoke French and English. Legislation in 1877 made official provision for the two languages in the legislature, the law and the courts. The balance of numbers slowly shifted - against the French. In 1891, provisions for the French language were eliminated in the Territories. In 1905, when Alberta and Saskatchewan were created, even the influence of Sir Wilfrid Laurier could not overcome the determination of the English-speaking to provide no place for French in the new provinces. French explorers and French Canadian voyageurs had opened the west; their Metis descendants and French-Canadian settlers had established farms, villages, schools and communities in Manitoba, Saskatchewan and Alberta that had been French from their beginnings. Yet where, in Manitoba, the French Canadians had guarantees, they were repudiated: where they had no guarantees they got none. The dream of a French-Canadian sharing in the development of the new west died - but the bitterness and the sense of betrayal did not.

For a time, hope continued among French Canadians that, if the west was lost, at least Ontario would respect the rights to French education that had been acquired by the many thousands of French-Canadians living there, although the rights were not constitutionally protected as they had been in Manitoba. But those rights were brought to an end by a regulation most of us never heard of - Regulation 17, passed in 1913. Even in Ottawa, the capital of the country, education in French was curtailed. The Ontario of that day set its face against anything approaching equal treatment.

And here in the Maritimes, an area so intimately associated with the French fact from the early years of development of this continent, what was the prevailing attitude towards the large minority of French speakers for the hundred years after Confederation? It is only in recent times that Acadians have really begun to have access to high-school, technical and university education in French. Even cities with 40 percent French-speaking population refused, until very recently, to recognize the French language and culture.

I have, in outline, given a history of the two communities in Canada as many French-Canadians see it. They regard it as a history of all too frequent

repudiation and disrespect for the French-speaking community. And yet, through it all, Quebec respected the rights of the English-speaking community there. Circumstances were different of course: the English-speaking minority was proportionately larger and much more influential. But in Quebec they really did measure up to the concept of two communities. From this great difference of attitude between Quebec and the other provinces grew a sense, by French-Canadians, of being wronged - of being humiliated, insulted and trampled upon wherever the English-speaking were in the majority. A sense too that only in the province of Quebec, a province with a French-speaking majority, could the French community find the respect and the chance to be a community that many had hoped all of Canada would provide. And so they turned inward to their own province of Quebec for the security of their culture, their language and their community.

It is this background, together with the economic domination of Quebec by the English-speaking commercial element, that provided the disillusion and resentment from which separatism has grown. It is from this too that the rejection of Canada even by many Quebecers who are not separatists also developed -

developed to the point where many will no longer call themselves "French Canadians" - they are "Québécois": people of Quebec. The loyalty to Canada shrivelled with the sense that Canada felt no loyalty to them, to their language or to their community. We are paying the price today for a hundred years of failure to do what a strong majority could so easily do - to treat with generosity and respect a weaker and less numerous community that shares our country.

We have, in English-speaking Canada, made some real progress in the last ten years or so. Ontario has greatly improved the provision of education in French and has developed governmental services in that language. New Brunswick, to its great credit, has established the two languages as official and equal in status. At the federal level, the first direct measure was the establishment in 1963 of the Royal Commission on Bilinqualism and Biculturalism. We took an important step with the Official Languages Act in 1968. But our experience since these actions demonstrates that laws, regulations or language provisions alone - however well intentioned - are no adequate remedy for our problem. English-speaking Canada has not understood

the reasons for the new languages policy approved by Parliament and pursued by the government. Much of English-speaking Canada has reacted to it with exasperation and even anger. We - the English-speaking - have not been able to understand what an insult it is to every French Canadian to prohibit the use of French for traffic control at Montreal airports - airports in Quebec, the heart of French Canada. It is alleged to be unsafe to use French as well as English - but French Canadians know that both French and English have been used for years in the great airports of Paris with apparent safety. They know too that most countries of the world use two - or more than two - languages in air control. They do not believe that the support in English-speaking Canada for English-only in air control was based on safety alone. They see our backing of the strikes of controllers and pilots in 1976 as proof that "English-Canada" has not changed: that it is as ungenerous and as unwilling to respect the French community as ever.

The measures we have taken so far on language policy have not worked adequately because the basic attitude of English-speaking Canada has not really changed. It would be as easy as it would be tragic if the action now being taken in Quebec were to prevent the

more positive attitude in English-speaking Canada that we so desperately need. "Bill No. 1" - the new Quebec language law - is the product, in part, of the disrespect to which I have referred and of the resentment it produced. One can hope for some change before the Bill is finally passed into law but the main hope must be in a new confidence in Quebec - a confidence that restrictive legislation is not needed to protect French there because the environment of Canada has become one in which French is accepted and can flourish. Bill No. 1 must not become an obstacle to change in the attitudes of English-speaking Canada. It is rather the measure of our need to change if we want to preserve our country. Are we prepared to do and to accept the things that are necessary to give security and equality to the French-speaking community wherever it exists throughout Canada? Those are the questions before the country today. And time is running out.

To come through our present crisis with some hope of achieving or of preserving the things that are of greatest importance to both sides, our two communities have to do some clearer thinking than they have done so far. I am convinced that there is today on both sides much wishful thinking and much dangerous illusion.

I have already touched on what I think are some of the illusions on the English-speaking side - the illusion that changes of constitution or mechanics will do the trick. One version is that we can preserve the unity of Canada by "decentralization" of powers from Ottawa to the provinces or by a "special status" for Quebec. The decentralization myth is pervasive but it seems to me there is really very little more that can be constitutionally decentralized if we want to retain a manageable country with a manageable economy. We are already one of the most decentralized countries on earth. As for "special status" for Quebec, the question is what may be possible without undermining the essentials of our federal system and its basic equality for the provinces. It is doubtful if we can go very far in this direction without weakening Confederation so seriously as to lead ultimately to the separation that such measures would be designed to prevent. This does not mean that we cannot and should not revise our constitution. We can and we should. We can - if we are willing - effect changes that will provide more effective protection for the French language and culture in Quebec and ensure their flourishing development. We can give greater security to our minority groups everywhere, with equality of treatment and opportunity. We can also provide change and renewal to the operation of our federation generally: a "third option" to separation or the

status quo. But that "third option" must include the increased understanding and the change of attitude to which I have referred. Constitutional change alone, however substantial and significant, will not be enough.

There is a second illusion on the English-side: that we can save our unity by having a French Quebec, where no English is spoken, on the one hand and nine "English" provinces, where no French is spoken, on the other. This proposition has a seductive charm. We would get rid of that wretched problem of two languages and we would live in unilingual bliss ever after. But how would we communicate? What would we do about the minorities now in nearly all our provinces? How would we govern the country? Or would we have two governments? Sooner or later we would indeed have two governments - and two countries. A union of two sharply-drawn unilingual blocs, in each of which the rights of the other community had been obliterated, could not last. It too would be the road to separation.

A third illusion of many English-speaking people is that Quebec will never be prepared to separate because the economic cost will be too great. I find this extremely dubious. It amounts to the proposition that

national unity can be based on economic advantage alone - no matter what offence the situation within that union may involve to human dignity or to cultural values. I do not believe it. Unity has to be based on some sense of common purpose other than achieving a bigger G.N.P. or a fatter pocket-book. There has to be a desire by people on both sides to live together, with mutual respect, in order to achieve things that each community values. If that sense does not exist, and if the Canada of the future seems as cold and as hostile to their language and culture as the Canada of the past has seemed, the French Canadians of Quebec will, sooner or later, prefer to be poorer with self-respect than richer without it. They are a proud people and they are not going to be bought.

I have spoken of illusions on the English-speaking side. I think the most common illusion on the French-speaking side is extremely dangerous. The illusion there is that, if separation occurs - or "independence", as they prefer to call it - it can be accompanied or followed by some kind of "economic association" between the new, independent Quebec and the fractured, divided Canada it would leave behind. I am convinced that this is a dream. The danger is

that those who hold to it or are beguiled by it could walk, still in false security, over the precipice of separation and wake up to reality when it is too late. I would ask those who advance this thesis whether they have considered the emotional attachment most English-speaking Canadians really hold, in the depths of their hearts, for this great, shambling, awkward country? Have they ever thought how those emotions will be aroused by every issue that has to be wrangled about if "independence" is to occur - emotions of love and of pride born of the heroic accomplishment of creating this great, free country from rock and cold and challenge? You do not outrage such emotions and then expect to do a friendly deal. The questions to be faced will be terribly difficult. To suggest just a few - is it all of Quebec that is to leave Confederation? The northern part of the province was not a part of Quebec, either in the French regime or at any other time before Confederation. It was disputed territory between England and France and later it became federal territory. It was added to Quebec only in 1912 by Act of the Parliament of Canada. In most parts of it there are still very few French-speaking Canadians - most are Indian and Inuit. English is the common language. Suppose a majority of the people of such regions vote to stay in Canada. Do

they have a right to self-determination? Or is Canada to force them to go against their will? Will not Quebec be offended to the depths of its being if Quebec is divided? But will not Canada be equally outraged if "Canadians", and a territory that was added to Quebec as a part of Canada, are forced to leave the union? There are other troublesome questions that some people try to gloss over as if they were easy. Not one will be easy. How much of the national debt of Canada would Quebec assume? There would be billions of dollars at issue. Who would own the tracks of the CNR in Quebec, joining "Canada West" to "Canada East"? They will be a life-line for Canada and especially for the Maritime provinces. What rights would "Canada" get to the St. Lawrence Seaway and to passage through it? There are a thousand other questions. By the time they had all been thrashed out, with controversy and argument in press and public, ill-will and recrimination would inevitably be general on both sides. I suspect they would be so great that we would be fortunate to come through the process of separation - or "independence", for it is the same thing - with any shred of friendship or of willingness to cooperate in anything. In such an atmosphere, who really thinks we can coolly and rationally work out something as complex as an economic association? But even if calm logic were to prevail, it is by no means

clear that there would be any adequate advantage to "Canada" in having an economic association with an independent Quebec. It would probably seem better to Canada to retain its freedom to "go it alone" and to pursue its own best interests with its own broad economy than to be harnessed to a partner whose economic interests might be very different.

In short, unless I am quite wrong, the "independence" option proposed for Quebec does not really include "economic association" with Canada at all. It is independence pure and simple. We would be lucky if it were independence without a festering hostility between Quebec and Canada that would make difficult even normal cooperation between independent states.

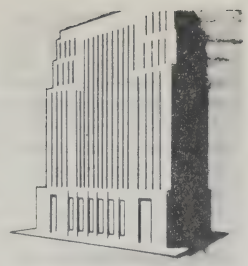
The question the people of Quebec must consider is whether they really need to incur all the costs and all the risks of independence in order to achieve their essential objectives. We have a highly and mutually beneficial economic association now. It can probably be improved. Quebec has very considerable constitutional powers now to protect its language and its culture and to ensure their strength and growth. Those powers can be used more effectively and they can be

strengthened. Is there any certainty that, in a renewed Confederation, the French-speaking community cannot have a flourishing life of the spirit - all that French culture holds most dear - in Quebec, with added strength to and from the French-speaking communities in other provinces? Unless there is great certainty that these objectives of French Canada cannot be secured, while still preserving our present economic union, it would seem to be the height of folly to incur all the risks - and all the enormous losses - that separation would almost certainly involve.

It seems to me that the best interests of both our communities, English-speaking and French-speaking, coincide in seeking a renewal of our present association within a modified Confederation. We both have so much to lose in a fracturing of this country into resentful, embittered fragments that we both must be prepared to make the adjustments of attitude and the concessions of mechanisms that will avoid it happening.

We should, I think, also try to have more perspective about our problems. If we are seriously concerned about civilization and peace in the world, we have an obligation to see that the destruction of this

Canada of two languages and cultures does not happen. There are some 2,500 languages and dialects on this earth. There are less than 150 states in which to accommodate them. Most of the countries of Africa and Asia are trying desperately to preserve unity and civilized behaviour with linguistic and cultural divisions far worse than ours. Our challenge is not ours alone: it is the challenge of a diverse humanity crowded onto a small planet. Our two peoples in Canada are among the most fortunate in the world - in wealth, education, cultural enrichment and traditions of personal freedom. French philosophical humanism and British Parliamentary democracy are among the great accomplishments of civilized man. We are the inheritors of both traditions in a way that is unique in the world. If we fail - after 110 years of free self-government as one country - who can hope to succeed in solving this basic problem of the human condition? Both our communities must find the greatness of spirit that will accommodate our two languages and our two cultures in mutual generosity and full equality so that Canada can and will endure.



Toronto,
arch-April, 1977

Monthly Review

THE BANK OF NOVA SCOTIA

The New Federal-Provincial Fiscal Arrangements

After a series of long and sometimes arduous negotiations, the federal and provincial governments achieved agreement last December on what is undoubtedly one of the most important milestones in the long history of intergovernmental financial arrangements in this country. The agreement, which has now been incorporated into federal legislation, and took effect on April 1, continues a basic structure of harmonized definitions and tax collecting arrangements that was begun over 35 years ago. But it also preserves the elaborate system of equalization payments directed towards the less favoured provinces; there are rather complicated measures to assure the relative stability of provincial government revenues; and (what is particularly noteworthy in this instance) it provides a major and much-needed disentangling of the responsibilities and financing for three major social programs in which there has been a formal sharing of costs between the federal and provincial governments: namely Hospital Insurance, Medicare and Post-Secondary Education.

The new legislation, which goes by the forbidding title of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977,* is obviously a very comprehensive and complex affair. And its significance may also have been obscured by the political rhetoric which is an almost inescapable feature of negotiations among eleven sets of politicians, as well as by the deeper political concerns that have been raised by last November's election in Quebec. Yet the kind of financial arrangements that can be established within any federal state are crucial to its whole operation; and in a good many respects the new Canadian agreements constitute a most encouraging surge of progress in the long evolution of this country's federal-provincial relationship. It is thus the purpose of this REVIEW to try to throw some useful light and perspective on what has now actually been achieved, first through a brief tracing of significant historical background, and then through a discussion of some of the key issues involved.*

Cooperation in the Tax System

The present system for levying and collecting income taxes in Canada can be traced back in large part to the Wartime Tax Rental Agreements reached by the Government of Canada and the provinces in 1941. Those agreements themselves represented a kind of second effort in this area as they followed an abortive federal-provincial conference that had been called to consider the far-reaching proposals of the Rowell-Sirois Commission.† What emerged was a pragmatic adjustment to the prospective large requirements of the federal government for financing the Second World War. In the light of previous federal-provincial disagreements and provincial concerns not to forgo permanently their rights to the tax fields involved, these first agreements were explicity temporary in nature, scheduled to expire after the end of the war.

Thus, for a time, all provinces surrendered their constitutional right to impose personal income taxes and direct taxes on corporations. In return, the Government of Canada made rental payments, under several options which took some account of the special financial needs of those provinces whose revenue bases and debt loads were under particular strain.

A successor set of tax rental arrangements, much like the one reached during the emergency conditions of wartime, was negotiated in 1947, and with some later revisions it lasted until 1957. These tax rental agreements again were reached as a second try after some of the provinces had rejected a wide-ranging set of federal proposals presented in 1945-46 at federal-provincial conferences on postwar reconstruction.

In part, the thrust behind the changes actually made at this time related to the new thinking that had developed about the active use of fiscal policy as a key instrument in maintaining a high level of employment, thinking which included appropriate variations in tax rates as a task for a central government. There was federal concern, too, that the real benefits achieved under the wartime system by way of standardizing definitions and tax bases across the country should not be dissipated.

These rental payments were made to agreeing provinces on the basis of their choice of several options based on different mixtures of per capita payments and of a measure of "fiscal capacity" (i.e., the productiveness of the revenue

*The picture which a *Review* can give of this complex area is necessarily a broad-brush one. The reader interested in a fuller discussion of the background is referred to A. Milton Moore, J. Harvey Perry and Donald I. Beach, *The Financing of Canadian Federation: The first hundred years,* Canadian Tax Foundation, Toronto, 1966; to James H. Lynn *Federal-Provincial Fiscal Relations,* a study for the Royal Commission on Taxation, Queen's Printer, Ottawa, 1967; to George E. Carter, *Canadian Conditional Grants Since World War II,* Canadian Tax Foundation, Toronto, 1971; and to the papers on federal-provincial relations contained in the proceedings of the annual conventions held by the Canadian Tax Foundation. Recent developments have been covered in material published by many of the governments involved.

†This Commission, formally known as the Royal Commission on Dominion-Provincial Relations, had been set up as a result of the financial strains of the 1930s. Its recommendations were not accepted but its research and analysis have influenced much later thinking on federal-provincial relations.

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base which the province was surrendering). However, not all provinces were parties to these agreements. Quebec never entered into such an agreement; and Ontario only entered into one in 1952 when an additional more favourable option was provided to it.

Despite some attractive features, these agreements had several drawbacks. In particular the provinces which signed up, and those which did not, could receive quite differing treatment. Between 1947 and 1952, for example, neither Ontario nor Quebec imposed their own personal income taxes.* Yet neither province (nor their taxpayers) received any compensation for leaving this field as effectively open to the federal government as had the agreeing provinces.

After much political bargaining, a major redesign was therefore made with the Federal-Provincial Tax Sharing Act of 1957. These negotiations produced a system which bears much closer resemblance to the present one than did the old tax rental agreements. The big step taken was the clear-cut distinction drawn between tax rental payments (to provinces coordinating their tax bases and collection systems with those of the Government of Canada) and federal equalization payments to less favoured provinces.

Two alternative arrangements were devised to facilitate the joint occupation of the major direct tax fields in which both federal and provincial governments have constitutional rights. Under the tax collection scheme the federal government paid directly to each agreeing province three "standard taxes"—10% of federal personal income tax, 9% of corporate taxable income† and half of federal estate taxes on its residents. While the federal government administered tax collections for these provinces free of charge, it also fixed their tax rates and defined all the framework of their tax systems. For provinces which did not take part in the special tax collection system, the federal government provided for abatements corresponding to the "standard taxes," i.e. it reduced the schedule of federal tax rates imposed on their residents by the appropriate amounts.

Equalization payments (discussed in more detail later) were specifically separated from these tax-sharing arrangements. Thus a provincial government and its residents were as well off if the province did not take part in the federal collection arrangements as if it did; but against the freedom to set its own rates and its own tax schedules a province had to weigh the cost of setting up its own collection apparatus and the extra burden on its residents.

Quebec took full advantage of the abatement offered and set up its own complete collection system. Ontario entered into a collection agreement only in respect of the personal income tax, though it also adhered to the rules that had been worked out by the federal government and the agreeing provinces for allocating corporate income amongst jurisdictions. And after some revisions to these rules, Quebec moved several years later to rules which were for most purposes the same as those applied by the other Canadian jurisdictions.* Thus Canada has managed to avoid some of the manifold problems such as "discrimination, excessive costs of tax litigation, costly compliance and victimization of exposed businesses—and noncompliance by other businesses,"† which lack of uniformity of state corporate income taxes has produced in the United States.

The system established in the 1957 legislation has been amended quite a bit over the twenty years which have followed, mostly in the direction of a significant further withdrawal of the federal government from the personal income tax field. This federal withdrawal has undoubtedly not been as big as many of the provinces would have liked, but it has nevertheless helped to accommodate the provincial governments in their efforts to meet the large and growing demands for provincial and local expenditure characteristic of the postwar period. As well, provinces which take advantage of the federal government's willingness to administer the income tax system for them now have a good deal more flexibility than they did two decades ago.

Much of the progress in these directions came with the 1962 Act and with further negotiations in the years immediately following. As a result of the 1962 Act (which continued the pattern of renegotiations of federal-provincial fiscal arrangements at five-year intervals), the federal government reduced its own share of total personal income tax collections further. The standard abatement of personal income tax to provinces (which had risen from 10 to 13 percentage points in 1958 after a change of government at the federal level) rose from 13 per cent to 16 per cent in 1962; and further increases of one percentage point a year were scheduled for the next four years, bringing the total planned abatement to 20 percentage points of federal personal income tax by 1966. And following another change of government at the federal level it was arranged to add an additional permanent two percentage points to the abatement in each of 1965 and 1966, bringing it to twenty-four percentage points in 1966.

In 1962 also there was a formal and partly symbolic move away from a tax rental system which had made it difficult for provinces to set their own rates. Under the new arrangements, the Government of Canada continued to abate to the provinces a specified and standard percentage of a notional federal basic personal income tax. The federal government collected for itself this notional tax less the standard abatements made to the provinces (but plus certain surcharges which were not part of federal basic personal income tax). The federal government also collected personal income taxes for the nine provinces which had collection agreements with it at rates similarly specified as a percentage of the national federal basic personal income tax. But for the first time, the levels of taxes to be applied to residents of participating provinces were to be set by the province in question. Thus agreeing provinces were free to set their own tax rates, though these rates were in effect applied to personal income as defined for federal tax purposes and to a schedule laid down by the federal government. At the same time comparable arrangements were made in respect of corporate income taxes.

Only two of the provinces took quick advantage of their new ability to change tax rates while staying within the federal tax collection system. Most of them, for the shorter-term, preferred to develop other tax fields. In the last few years, however, most provinces have varied their tax rates. Now only Ontario, out of the nine provinces using the personal income tax collection facilities of the federal government, has not done so. And most of the provinces for which the federal government collects corporate income taxes have adjusted these rates too.

Since 1962 there have been no further wholly unconditional transfers of "tax room" to the provinces. An additional four percentage points of personal income tax and one point of corporation income were made available to all provinces in 1967, but this was related to

*That these two provinces refrained from tilling this fertile field provides a striking indication of how much the financial demands on provincial governments have grown since the first years of the postwar period.

†Note that this transfer was 9% of corporate profits, not of taxes on corporate profits.

*Ernest H. Smith "Allocating to Provinces the Taxable Income of Corporations: How the Federal-Provincial Allocation Rules Evolved," *Canadian Tax Journal*, September-October 1976, pp. 545-571 gives a detailed history of developments in this area.

†James A. Maxwell and J. Richard Aronson, *Financing State and Local Governments*, 3rd edition, Brookings Institution, Washington, D.C., 1977, p. 125.

shared-cost spending in the field of Post-Secondary Education. With the 1972 Act, however, there was a change in the basis upon which provincial personal income tax is calculated. From 1972, provincial income taxes were expressed as a percentage of actual federal basic personal income tax due (rather than calculated on the basis of a notional federal basic tax from which abatements were subsequently subtracted). In part this change was to get around a possible implication of the abatement procedure that there was a "standard" and therefore especially appropriate level for provincial taxes. Also, in the wake of the Report of the Royal Commission on Taxation (the Carter Commission), the federal government's White Paper on Tax Reform and the long drawn-out process of discussion, a major reform of the income tax was instituted at the beginning of 1972. And to produce equivalent amounts of provincial revenue a technical rate adjustment was required. Thus the old standard federal abatement of 28 percentage points of federal basic personal income tax became a provincial tax rate of 30.5% of federal tax payable from 1972 to 1976.*

In 1972, also, it became possible for provinces using the tax collection facilities of the federal government to make a variety of changes to the structure of the personal income taxes they impose. Thus a province may now impose certain kinds of special surcharges or rebates on taxes above or below specified levels. And five of the nine provinces currently using the federal collection arrangements for the personal income tax have supplementary arrangements for special tax credit schemes, used for such purposes as offsetting the regressivity of provincial retail sales taxes. This kind of arrangement adds to the diversity of the personal income tax across the country. But it satisfies the desires of provincial governments for flexibility to meet their own policy priorities without requiring additional filings by individuals or costing the Government of Canada money or manoeuvrability.

Revenue Guarantees

In all the tax agreements made since 1941 the federal government has provided some assurance of a revenue floor to the provinces. In their modern form, such revenue stabilization efforts date back to the 1967 arrangements. Over the years this program has been extended in scope and with the 1972 Act there was provision for a deficiency payment to any province whose total revenues from all sources except the revenue stabilization program itself fell below the level reached in the previous year (after an adjustment to exclude the effects of any changes in tax rates). Since then, however, there has been enormous upheaval in world oil markets, and a good deal of volatility in commodity markets generally. In consequence, a special proviso has been inserted in the 1977 version of the Act limiting the federal government's exposure in the event of reductions in a province's revenues from natural resources. It is perhaps worth noting, however, that the federal government has never had to make any payments to provinces under the revenue stabilization program since its introduction in 1967.

The arrangement now specifically known as the Revenue Guarantee dates back only to the major changes in the tax structure introduced in 1972. To encourage a continuing national uniformity of the basic income tax system, the federal government guaranteed that no province would have smaller total receipts from personal and corporate income taxes under the new tax structure than it would have had under the previous one. The original offer was a guarantee for three years but after negotiations with the provinces it was extended for a full five-year period. This guarantee was later expanded to compensate provinces for the cost of following most federal changes to the income tax (a major exception being made for the indexing of the personal income tax structure that began in 1974). Current estimates are that payments to the provinces under the Revenue Guarantee in respect of the 1976 tax year will amount to around $870 millions, about half of this due to changes in the federal tax structure since 1972.

Not surprisingly, the future of this Revenue Guarantee was a major issue in the latest round of negotiations on the new federal-provincial arrangements. The Government of Canada argued that the Revenue Guarantee had explicitly been for a period of transition to the reformed tax system and that the provinces now had the experience needed to fix rates at the levels needed to produce revenue in line with their requirements. The provincial governments, by contrast, were naturally very interested in these unconditional funds being provided on a continuing basis so as to limit their recourse to explicit taxation of their own residents. Initially the provinces formed a common front to seek as compensation for the end of the Guarantee an abatement of four percent of federal personal income tax equalized to the yield in the highest province (i.e. with supplementary cash payments to nine provinces to make the per capita value of such an abatement in every province equal to its value in the wealthiest province).

The final result was one of the more interesting displays of public bargaining in Canada in recent years. In the end a last-minute compromise was reached. The federal government surrendered two percentage points of its personal income tax, half in cash and half as tax room (both equalized to the national average). The federal government presented this transfer as being in final settlement of all outstanding issues, but there can be no doubt that the Revenue Guarantee was the most important of these issues. As well, the federal government committed itself to pay for losses in provincial income tax revenue arising when a province follows a federal change in the personal income tax structure if the relevant provincial revenue loss is more than one per cent of basic federal tax in that province. This new guarantee applies only if the federal changes are announced after the beginning of a tax year to take effect in that same year.

This guarantee limits the exposure of provincial governments to unpredictable changes in their revenues arising from maintaining a uniform tax system. But it also limits the federal government's commitment to the first tax year in which a change is in effect. Initially this guarantee was to be only to the nine provinces for which the federal government collects personal income tax. After a request from Quebec, however, the guarantee was made available to that province also for instances when it changes its personal income tax in parallel with moves at the federal level.

Equalization Payments

For twenty years now, equalization payments have been made by the federal government to the provincial governments having lesser abilities to raise revenues from their own economies. The objective has been to facilitate the provision of a reasonably adequate level of public services across the country without some provinces needing to resort to levels of taxation which are excessively stringent by the standards of the richer provinces. Table 1 shows the current importance of these payments to the recipient provinces.

The equalization system is now based on a sophisticated "representative provincial tax system" which takes all provincial sources of revenue into account. Even local school taxes are included in recognition of a perceived national inter-

*For the same reason, the four percentage points of personal income tax abated to provinces for Post-Secondary Education, but included in the 28 points of abated tax, changed to 4.357% of federal personal income tax.

Table 1.
THE GOVERNMENT OF CANADA'S EQUALIZATION PAYMENTS 1977-78

Payments to:	Total ($ million)	Per Capita ($)
Newfoundland	269	479
Prince Edward Island	70	577
Nova Scotia	349	416
New Brunswick	276	394
Quebec	1262	200
Manitoba	201	194
Saskatchewan	39	41
TOTAL	2467	

Source: Treasury Board, Federal Expenditure Plan: How your tax dollar is spent, Ottawa, 1977, Table 22.

Notes to Table
1. Component figures do not add precisely to total because of rounding.
2. The figures are estimates of payments in respect of 1977-78, rather than final figures and do not include adjustments to be made during 1977-78 in respect of payments in previous years.

est in having children in lower-income provinces able to enjoy reasonable standards of public education. A province whose per capita revenue receipts from such a representative system are less than the national average per capita yield receives special federal payments equal to the per capita shortfall multiplied by its population.

This procedure was amended in 1974 after the escalation of world oil prices. In recognition of the windfall additions to the oil and gas revenues of producing provinces and in light of disruptions therefore developing to the existing arrangements, the equalization formula was changed so that only one-third of increases in oil and gas revenues above 1973-74 levels would be taken into account. With the 1977 Act a second amendment was made. The volatility of markets for resource products is now recognized in a more consistent manner, with only half of provincial revenues from all non-renewable natural resources being included in the equalization formula.

The unconditional–"no strings-attached"–nature of equalization payments is worth emphasizing. The equalization system, as well, is based on the measured ability of a province to raise revenues, rather than on the vigour with which it actually does tax its residents. A province could both have an unproductive revenue base and use that base relatively lightly by average standards–though the less affluent provinces generally do have relatively high tax rates.

Equalization payments can be considered as descendants of the unconditional "National Adjustment Grants" proposed in 1940 by the Rowell-Sirois Commission. One difference is that these grants were to be based on comparisons of both ability to raise revenues and cost of providing services with the national average (though the cost of providing average services would have been extremely difficult to measure). A second important difference is that the Rowell-Sirois Commission's recommendations were rejected by the three provinces which would not have received National Adjustment Grants whereas equalization payments are generally accepted today as an integral part of Canadian federalism.

Shared-Cost Programs

The final important area covered by the new legislation is the financing of some of the big programs whose funding is shared by federal and provincial governments–Hospital Insurance, Medicare, and Post-Secondary Education. Shared-cost programs have been used in a wide variety of fields, from transportation and agriculture to education and welfare, and have become one of the distinctive features of Canadian federalism. Indeed a comprehensive catalogue of federal-provincial programs and activities, the great bulk of which are shared-cost programs, is around one and one-quarter inches thick and more than 500 pages long.* However, much the largest part of activity under shared-cost arrangements is accounted for by the three programs covered by the new Act and by the Canada Assistance Plan (a welfare program whose future is currently the subject of negotiations between the federal and provincial governments).

The Government of Canada's position on shared-cost programs has generally reflected a broad perception of the national interest.† Part of the rationale for the expansion in 1967 of federal programs supporting Post-Secondary Education, for example, was bringing the superior resources and credit standing of the federal government to bear in an area where heavy financial pressures were developing on provincial governments. A part of the background to the federal presence in Hospital Insurance and in Medicare was a concern for such national standards as portability of coverage across provincial boundaries. A more general argument, too, has been that, because other provinces or the nation as a whole may bear some of the social and economic costs produced by a shortfall of public services in a particular province, there is a broad national interest in certain minimum services being provided in all provinces.

The public views of most provincial governments on shared-cost programs have been more mixed.* There have been objections (notably but not exclusively from successive governments of Quebec) about the appropriateness of federal spending in areas which for the most part the B.N.A. Act placed under provincial jurisdiction.† Much of the comment by provincial spokesmen, however, has focussed on the need for adequate consultation and on concerns about the distortions to provincial priorities which shared-cost programs can introduce. There have also been unhappy provincial comments on the administrative rigidities which shared-cost programs can involve. Detailed federal audits of provincial spending have been an irritant as well as a less-than-effective use of resources. Sometimes, too, particular kinds of outlays have been "sharable" but other closely related and more economical kinds of spending have not been sharable. (It is ironic though, that many of these items on the list of provincial complaints about the federal government are repeated in municipal discussions of provincial-municipal relations).

Analysts outside official circles, too have had mixed feelings about shared-cost programs and one of the biggest concerns has been about the blurring of the lines of official responsibility and accountability to the electorate.

In all of the four big shared-cost programs as they were set up through the late 1950s and the 1960s, the federal government essentially matched total provincial outlays on a dollar-for-dollar basis, despite variations in the exact arrangement from program to program. In both the Canada Assistance Plan and the Post-Secondary Education Arrangements, the sharing has been explicitly 50-50 on eligible outlays.‡ And for Hospital Insurance and Medicare the payments to provinces were calculated on a formula which takes national average per capita outlays into account. This

A Descriptive Inventory of Federal-Provincial Programs and Activities, Federal-Provincial Relations Office (59 Sparks St., Ottawa).

†*Federal-Provincial Grants and the Spending Power of Parliament*, Ottawa, Queen's Printer, 1969, a working paper produced as background to the 1969-71 negotiations on the Constitution, discusses shared-cost programs from a federal point of view and gives some references to the constitutional literature.

**Supplementary Papers on Federal-Provincial Finance*, presented to the Legislative Assembly of Ontario on March 28, 1972 along with that year's budget and prepared by the Ministry of Treasury, Economics and Intergovernmental Affairs, Taxation and Fiscal Policy Branch provides some provincial perspective on these questions as does the one of Budget Papers presented as part of the 1977 Ontario Budget.

†In the 1950s, in fact, Quebec refused to allow its universities to accept direct grants from the federal government, education being an area of provincial jurisdiction. And recognition of provincial concerns on this point explains why funds going to provinces as matching contributions from the Government of Canada for their spending on Post-Secondary Education have been described formally as unconditional grants, even though cost-sharing contributions are usually taken to be synonomous with conditional grants.

(‡see footnote overleaf)

difference, however, did not alter the open-ended nature of the commitments which the federal government had made.

The special "contracting out" mechanism negotiated in the mid-1960s through which Quebec has participated in several shared-cost programs (notably Hospital Insurance and the Canada Assistance Plan) also did not make a significant difference to this pattern.* Under these arrangements Quebec received additional abatements of personal income tax plus special adjusting cash payments to bring its total receipts to what they would have been if it participated in these shared-cost programs in the same way as the other provinces. But these abatements of tax points and cash adjustment payments were made to Quebec on conditions (such as those covering sharability of outlays and reporting requirements) operationally the same as those agreed upon by the federal government and the other nine provinces.

After these programs had got under way, the federal government became increasingly concerned about both the rapid growth in its outlays under them and the open-ended nature of its commitments. More and more federal officials came to be aware of some of the drawbacks to the matching payments mechanism, particularly that each provincial administration bore only about half of the burden of growth of its spending in the major share-cost programs. There still was a view that open-ended matching payments might have been an important element in the first years of a share-cost program. They were looked on as having been useful in encouraging the provinces to enter these programs and perhaps necessary in the period when levels of program activity and costs were still being established. But the situation was thought different for a "mature" program where costs were known with some degree of precision, where adequate levels of services were being provided and where provinces would continue to provide them. In these circumstances, the thinking was that the matching payments mechanism—and the so-called "fifty-cent dollar"—could well unbalance the priorities of provincial governments as between shared-cost items and other spending fields. It diminished the incentives for a provincial government to exercise the same care in controlling expenses in areas covered by shared-cost programs as was shown in other areas of activity.

At the same time, however, the Government of Canada could not simply walk away from its role of financially assisting provincial activity in these areas. It had, after all, encouraged provinces to move into some of them in the first place and there was a continuing desire to maintain some of the national standards—such as portability across provincial boundaries—which originally had encouraged federal participation. On several occasions in the last decade, therefore, the Government of Canada put proposals to the provinces which would remove the explicit linkage between provincial spending and federal contributions for some of the big shared-cost programs. The general idea was to relate growth in its grants to growth in some measure of the size of the economy or returns from the tax system.

One such proposal about transfers for Post-Secondary Education was made during the negotiations preceding the 1972 Act. The provinces did not accept it, largely as the result of unease about their potential exposure to rising program costs. The federal government, therefore, chose an alternative tack; and a limit of 15% to the increase in any one year of total federal contributions (abatements plus cash) for Post-Secondary Education was part of the package eventually emerging from the bargaining sessions. This limit has in fact put a ceiling on federal contributions in recent years.

Much the same sequence of events repeated itself in the fields of Hospital Insurance and Medicare. No agreement was reached in 1974 about analogous proposals for different arrangements for federal support of these programs. In 1975, therefore, the federal government amended the Medical Care Act to place upper limits on the annual increases in its contributions; and it gave five years notice (as required by the Hospital Insurance Act) of its intention to terminate the Hospital Insurance agreements with provinces in 1980. These unilateral federal measures were a big factor in the background to the recent federal-provincial negotiations.

With the limits on annual increases in its contributions the Government of Canada had partly dealt with problems of rapid growth in its spending on Post-Secondary Education and on Medicare. Yet the Hospital Insurance scheme still remained to be renegotiated. The method of arbitrary limits on increases in total federal contributions could produce inequities amongst the various provinces. In these circumstances it was

Table 2. FEDERAL SHARE OF ESTABLISHED PROGRAMS FINANCING, 1977-78
$ million

	Cash Payments				Tax Transfers					
Payments to:	Hospital Insurance	Medicare	Post-Secondary Education	Sub-total	Direct	Equalization	Sub-total	TOTAL	Extended Health Care Transfer	GRAND TOTAL
Newfoundland	35	12	23	71	39	35	74	144	11	156
Prince Edward Island	7	3	5	14	8	8	16	30	2	33
Nova Scotia	56	20	37	113	74	36	110	223	17	240
New Brunswick	44	15	28	87	55	37	91	179	14	193
Quebec	470	167	305	941	731	92	823	1764	125	1890
Ontario	522	196	358	1106	1300	–	1300	2406	169	2575
Manitoba	69	25	45	139	114	22	136	275	21	295
Saskatchewan	61	22	39	122	100	24	124	246	19	265
Alberta	130	46	85	261	256	–	256	518	37	555
British Columbia	147	52	96	295	385	–	385	680	51	731
TOTAL	1572	558	1020	3150	3061	254	3315	6465	467	6932

Sources: Treasury Board, Federal Expenditure Plan: How your tax dollar is spent, Ottawa, 1977. Table 22.
Minutes of Proceedings and Evidence of Standing Committee of House of Commons on Finance, Trade and Economic Affairs, March 8, 1977, Appendix "FTE 12".

Notes to table

1. Component figures may not add exactly to totals because of rounding.
2. Under the new arrangements for financing established programs, the federal government's contribution is not specifically linked to provincial outlays. The distribution of the cash payments amongst the programs, therefore, is necessarily arbitrary; the figure here for each program is based on its share of the total for the three programs in the 1975-76 fiscal year.
3. The figures are estimates for 1977-78 rather than final figures and do not include adjustments to be made during 1977-78 in respect of payments during previous years.
4. The direct tax transfer consists of an abatement of 13.5 percentage points of federal personal income tax and one per cent of taxable corporate income. The equalization payments associated with these taxes and shown in this table are also included in the equalization payments shown in Table 1.
5. The cash amount for Quebec includes the value of a personal income tax abatement to place the figure on the same basis as those for the other provinces.

‡While the big part of the federal contribution to Post-Secondary Education was in the form of tax abatements, there were adjusting cash payments to bring total provincial receipts up to the 50% share. The one point of corporate income abated to the provinces for Post-Secondary Education is something of a historical relic. Originally one point of corporate income had been abated to Quebec in 1960 as a substitute for the direct federal grants made to universities in the other provinces. It was extended to all provinces in the mid-1960s when the federal government moved to expand its total support of post-secondary education and harmonize its support of universities and other forms of post-secondary education; and university grants were dropped. The personal income tax has, however, been found more suitable than the corporate income tax for abatement to provinces because its yield is not as cyclically volatile and it has a stronger underlying trend of growth.

*Originally, the "opting out" arrangements were intended to be temporary; a permanent resolution, however, was delayed by tax reform and by negotiations between the federal government and other provinces about these same programs.

hoped that negotiated arrangements would clear the air for future federal dealings with the provinces. And there was a feeling that it would be desirable to have some sort of a per capita element in the federal contributions to the shared-cost programs, partly to take additional account of the position of the less prosperous provinces.

Some of the provinces, too, came to the bargaining table with specific aims in mind. Since the 1960s, a number of them had become more interested in a restructuring of the major share-cost programs under which they would take on more of the policy-making and administrative responsibilities, in return for extra tax room.* The hope was that the provinces would be enabled to manage these programs (especially health programs) more effectively with such enhancement of their authority. The approach to a reworking of the shared-cost arrangements did, of course, vary from province to province. Some of the more affluent provinces focussed especially on tax room whereas some of the less affluent ones were rather more interested in cash payments from the federal government. But at the meetings of First Ministers in the summer of 1976 more than half of the provinces expressed their interest in greater responsibilities coupled with increased federal tax abatements.

The New Financing Arrangements

It was out of all these considerations that an agreement was reached last December on new financing arrangements for the major shared-cost programs other than the Canada Assistance Plan. Contributions from the Government of Canada will no longer be directly related to provincial expenditures, but instead will rise with the growth of the economy. Conversely, the provincial governments' receipts in respect of these programs will no longer be tied to their outlays in the specific areas concerned, although the provinces have committed themselves to continue to meet certain standards in some key respects.

About half of the federal contribution now will be in cash with the rest to be in abated tax room. In time the cash payments to each province will come to be determined by a formula using half of the national average per capita federal payments in a 1975-76 base period, escalated by a moving average of growth rates for per capita Gross National Product. For the shorter term, there will be some temporary adjustments to bring the move to a uniform scale of payments into effect gradually. And in addition, the basic cash payments will be supplemented by a further unconditional payment equivalent to one percentage point of personal income tax and, where applicable, associated equalization.

As for the tax portion of the federal contribution, it is to consist of 13.5 percentage points of federal personal income tax plus one point of corporate income, as well as associated equalization where this is applicable.* In addition, because transfers of tax rights have a below-average value in some provinces, the federal government will make special transitional payments. Therefore each province will receive at least as much revenue transfer as it would have were the transfers all worked out on the cash basis discussed above (rather than being half tax and half cash).

Eventually receipts from transferred tax room should catch up with the value of the cash payments since personal tax revenues grow faster than the economy as a whole, the escalator used for the cash transfers. During the interim period when the transitional support payments are being made, however, the wealthier provinces will enjoy faster growth in their net receipts from Established Programs Financing.

It is also worth noting that the supplementary cash payment (that is equivalent to one percentage point of personal income tax) and one of the percentage points of abated personal tax—both of them formally ascribed to Established Programs Financing—are in fact the same two percentage points of personal income tax which, as discussed earlier, were traded off at the December meetings in settlement for the ending of the full Revenue Guarantee provision and for other outstanding issues.

Finally a special arrangement has been devised to provide the provinces with cash payments under an Extended Health Service Program. The purpose of these payments (to be made on a per capita basis and to be escalated by growth in per capita GNP) is to assist the provinces in providing supplementary kinds of services in the health care field, such as home care or residential care, to complement the other kinds of services which in the past were financed under Hospital Insurance and Medicare. This new program updates a federal offer made during earlier discussions about methods of controlling health care costs; in part payments under it will replace federal shared-cost contributions for the provision of such services to persons in need under the Canada Assistance Plan.

A Summing Up

If only these changes to shared-cost arrangements are taken into account, the dollars and cents position of the provinces as a group has improved substantially. Counting the equalization payments associated with the transferred tax points, the federal contribution for 1977-78 will be $924 millions higher than it would have been if the old rules had remained in effect; and the difference will grow over time. Against this, at least some of the provinces would set the end of the Revenue Guarantee—almost $900 millions in 1976—which they had hoped to keep operative. Thus the new agreement can be interpreted as being pretty much a saw-off. It is also true that the old rules for shared-cost programs would not always have been as favourable to the provinces as they have till now. The federal government, after all, had given notice of its intention to end the previous agreement for Hospital Insurance in 1980. At that time a new agreement placing some constraints on growth in the Government of Canada's contributions would have been likely.

In other ways, the new arrangements are distinctly more satisfactory for both federal and provincial governments. The Government of Canada now has clearly defined obligations for its contributions in support of three of the major shared-cost programs, and these obligations are the result of a bargaining process rather than an imposed solution. It also has the assurance that the provinces will continue to maintain standards in such facets of these programs as portability and degree of coverage.

Each province has a good deal more scope for defining its own programs without forcing them to fit exactly into rigid categories found acceptable by the federal-provincial bargaining process. The mixture of income taxes and cash payments gives an assurance of continuity and predictability in provincial receipts and reflects the interests of both the wealthier and the less prosperous provinces. There will no longer be detailed federal monitoring and auditing of provincial outlays. And because there is no longer dollar-for-dollar federal matching of provincial spending, any progress a provincial government is able to make in containing the growth of its spending in these shared-cost areas will be completely, rather than half, reflected in a betterment of its fiscal position. All told, the new arrangments are an entry on the constructive side of the national ledger.

*See, for example, the Ontario documents cited earlier.

*These abatements thus include the 4.357 percentage points of personal income tax and one percentage point of corporate income previously made available to the provinces for Post-Secondary Education.

Remarks by the Honourable André Ouellet

Minister of State for Urban Affairs

Discours de l'honorable André Ouellet

ministre d'État chargé des Affaires urbaines

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ANNUAL CONVENTION
UNION OF QUEBEC MUNICIPALITIES
QUEBEC CITY
SEPTEMBER 29, 1977

There is one thing that I would like everyone here to understand quite clearly, right from the outset: my presence here today, at this convention of the Union of Quebec Municipalities, has no constitutional implications, no constitutional significance of any kind whatever. Not only is this my own view; it is the only possible view. I cannot emphasize this point too strongly.

I am not here to deliver a lecture on the Canadian constitution. We are faced with too many major problems--by "we" I mean you ladies and gentlemen, other Canadian municipal authorities and myself--for me to waste the limited time at my disposal talking about an irrelevant issue.

It is irrelevant, you see, for us to consider whether the federal government has any powers in the area of urban affairs, or whether the provinces have exclusive jurisdiction, or whether the constitution ought to be changed. Not, mind you, that these are insignificant matters; on the contrary, they are very important matters, and sooner or later, they should undoubtedly be taken up by those whose task is to consider issues of constitutional reform. But that's what federal-provincial conferences are for, that's what meetings of premiers and cabinet ministers are for. We have not come here today to settle these thorny problems, and it is clearly most unfortunate that some people have seen fit to indulge in mini-tantrums about an

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imaginary constitutional crisis--at the expense of Quebec mayors and aldermen.

You invited me, and it is with a great pleasure that I received the letter of Mayor Caseau, to come and speak to you today for the same reason that you invited other people: you wanted your membership to have an opportunity, on the occasion of this convention, to obtain information that might be relevant to the management of local affairs. It is the function of an organization like yours to extend invitations of this kind to those who are in a position to contribute--and even more to the point, those who are willing to contribute--to the ongoing debate on such pressing matters as municipal finances, urban planning, the housing crisis, the land squeeze and problems of public accommodation.

As you know, these matters are as much my concern as yours. As the Minister of State for Urban Affairs, and also in my capacity as the minister responsible for the Central Mortgage and Housing Corporation, I frequently find that you and I have things to say to each other. Accordingly, I am very pleased that you have provided me with this opportunity to share my views, and the views of the federal government, on matters pertaining to the cities and towns of our country.

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May I say that as a Canadian, as a Quebecer and as a French-Canadian I am very proud and very happy to be here with you today. You have all been democratically elected by our fellow citizens, from every corner of Quebec, and you have shown courage and determination in standing up to those who sought to muzzle you, to subject you to censorship. It is very much to your credit that you have refused to knuckle under to those who are seeking to restrict freedom of speech, freedom of expression in this province.

. . May I also say, to reassure those who appear to be feeling seriously alarmed these days, that we have no desire whatever to impose our own views as far as urban planning goes, and we harbour absolutely no ambition to plan and administer the cities and towns of Canada. That is the job of mayors and council members--your job, in fact, ladies and gentlemen, and a good thing too, because no one is in a better position than yourselves to know what should be done for your fellow townspeople.

The federal government is aware and heartily agrees that municipal matters come under local and provincial jurisdiction. The Canadian government respects, and for that matter works to uphold, that jurisdiction. And there is no way for my Ministry to become involved in any form of urban planning or development unless directly invited to do so by a provincial government, or bound by an explicit agreement with the provincial government.

Nevertheless, the Canadian government plays a major role in every town and city in Canada, for reasons which you, ladies and gentlemen, understand quite clearly.

The federal government's role in urban affairs springs from its natural and inevitable concern for the quality of life in Canada--and it is a fact that the overwhelming majority of Canadian people live in cities and towns. In addition, the federal government is aware that most of its policies, programs, projects and activities are, in practice, bound to have necessarily some sort of repercussions on the cities and towns themselves and on the lives of the people who live there.

We have a whole range of programs designed to achieve particular objectives on a nation-wide scale that have nothing to do with cities directly, but which nevertheless have an incidental impact, so to speak, on them. Examples might be our policies in such areas as immigration, transport, economic expansion, public works and a number of others.

These policies of federal jurisdiction, depending on how they are implemented, may cause fairly far-reaching changes in the appearance or the life of a city, or may even, on occasion, we have to admit it, create serious local problems. The Ministry of State for Urban Affairs seeks to anticipate and head off such

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problems. Its task is to make sure that when the federal government engages in activities that affect your cities and towns, your wishes and objectives are given due attention. It also strives to ensure that other federal government departments and agencies are aware of urban problems and take your priorities into account.

It must also be recognized that the federal government owns many properties in Canadian cities: ports and airports, office buildings, national parks, post offices, warehouses, penitentiaries, customs and excise buildings, and so on. How these properties are used, both now and in the future, are matters which directly concern you. Development of federal properties will definitely affect your own development decisions, such as the quality and character of adjacent districts, the provision of municipal services, and the location of thoroughfares. Conversely, the type of development you plan for your own land can, or better yet, must influence the federal government's decision on how to use and develop its own properties, especially those which may be under-used or no longer needed for a specific purpose.

I could go on to list many other good reasons to explain why the federal government's presence is felt, either directly or indirectly, in cities across Canada and how it plays a very real role in them. However, it is probably through its activity in the field of housing and related services that you are most aware of

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the federal presence in your communities and I would like to discuss this in more detail.

The role which the federal government must assume in the housing field is merely to fulfil, to the best of its ability, its responsibility to all Canadian citizens, including those in Quebec, to ensure, to each citizen, that they have suitable housing at an affordable cost, as well as access to basic community services.

Recent data indicate that half a million new housing units have been constructed in Quebec during the last ten years. This represents capital expenditures of $10.8 billion, $5 billion of which has been financed under the National Housing Act, including $2 billion through direct investment by CMHC. Last year, 45 per cent of all new construction in Quebec was financed in this manner. In the field of municipal infrastructures alone, federal assistance of projects currently under way exceeds $256 million.

In response to the substantial rise in housing costs, the federal government has taken measures to help all Canadians, particularly those in greatest need, to obtain suitable housing.

I am not telling you, who are municipal administrators,

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anything new when I say that federal programs in the area of housing and assistance to community services have a direct bearing on the development and planning of towns and cities, the redevelopment of ageing neighbourhoods and the provision of municipal and community services. In many cases, for example, revitalizing old neighbourhoods, increasing land-use density and using mixed zoning have proven to be logical ways of alleviating some of the difficulties associated with urban sprawl and of lightening the financial load of Canadian municipalities.

I should point out in this regard that assistance programs for neighbourhood improvement and renovation of existing housing stock have been well received in Quebec.

Since these programs were instituted, the Central Mortgage and Housing Corporation has committed nearly $59 million to neighbourhood improvement projects in 56 areas. Over the past three years, the program has financed the renovation of 3,350 housing units, representing a total of $19.5 million. Projects like these are encouraging and the initiative, I would like to say it, rest entirely, in first place, with the municipalities and the province.

I am currently examining whether it would be more advantageous to continue the Neighbourhood Improvement Program,

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which under the National Housing Act, must end in 1978, or whether it would not be simpler to make the Residential Rehabilitation Assistance Program (RRAP) universal, that is, extend it to all municipalities and neighbourhoods in Canadian cities. I would appreciate hearing your views on this in the coming months.

Our new program of municipal grants is designed to greatly assist municipalities and neighbourhoods by providing funds which you are at complete liberty to use as you see fit, depending on your priorities. Under the terms of this program, as you are aware, municipalities are entitled to receive a $1,000 grant from the federal government for each eligible housing unit which is built. The federal government has already contributed in excess of $30 million to Quebec's municipalities. Clearly, this program is a success, and I can assure you that we have no intention of discontinuing it.

I must confess, however, to be perfectly frank with you, that the situation is not as rosy with regard to the other assistance programs for housing and municipalities.

Each year, the federal government earmarks millions of dollars for housing, municipal infrastructure, land assembly and other projects in the Province of Quebec.

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At the beginning of this year, as in the past years, we wrote to Quebec City to inform officials there of the federal funds available and of our desire to work closely with them and the municipalities to implement projects long-awaited in the province. Discussions are still going on.

Not only are the funds allocated for this year practically untouched, but we still have $102 million in funds previously committed for public housing in Quebec. That money was earmarked for use in projects which we have agreed to finance under the National Housing Act, but it has not been used. Of that figure, $57 million is slated for projects which have been approved, though construction has not yet begun. Another $45 million is destined for projects which we are anxious to approve, knowing as we do the pressing need to provide housing for the elderly and for low-income families in the Province of Quebec.

In 1977 the allocated public housing budget for Quebec is $90 million. So far, commitments have been made for only $8 million and these relate to loan increases for projects from previous years. Recently I was informed that the Quebec Housing Corporation has approved a $60 million program for the construction of 2,700 units. Apparently the plans are in the final stages of approval; I do not know when we will receive applications or what form they will take. I hope we will receive applications for the remainder of the funds allocated but my hopes are not high,

for it is already the end of September.

The 1977 budget for non-profit housing is $77 million. So far, of that $77 million, only one $20 million program has been approved; it is now under way through the Corporation d'Hébergement du Québec.

Similarly, CMHC has received no requests from Quebec for funding under its Rent Supplement Program, which is designed to help low-income people by gearing their rent payments to their incomes. Under this program, the federal and provincial government share, on a 50-50 basis, the subsidy which covers the difference between the rent paid by the tenant and the actual amount of rent.

The federal government's current budget for municipal infrastructure projects in the province is $99.5 million. Of this, only $10 million has been committed so far. A major initiative, the $60 million Montreal Urban Community water treatment project, is still being discussed.

Finally, $38.2 million has been set aside for land assembly. Only two projects are under consideration and the likelihood of a commitment seems slim.

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The examples I have just outlined illustrate that a great deal of federal money is available to Quebec this year, as it has been in past years. And yet only a small proportion of those funds has been used. I find this regrettable.

The present Quebec government would like the federal government to lend it enormous sums of money so that it could then turn around and lend these sums to the municipalities and to non-profit organizations.

. . The federal government finds this proposition quite unacceptable. It cannot act as banker for a province. This would not make sense, since a loan cannot be considered a transfer of funds. Quebec itself is free to make loans for housing on the capital market. Why doesn't it do so?

Obviously, it would be much more convenient to use funds from Ottawa for programs which would be attributed to Quebec alone. Given the current political situation, in which some people are questioning the validity of the Canadian Confederation and would have one believe that the federal government serves no useful purpose, I personally am not prepared to allow federal funds to be invested in Quebec, unless the people of Quebec are informed of the federal government's contribution to the housing projects involved.

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Nevertheless, the federal government has the responsibility that each level of government has, whether it be federal, provincial or municipal, to efficiently use the funds received by the taxpayers, who are exactly the same people for you, for the provincial government and for us. This duty, this necessity, you have before your municipal council to ensure the rational administration and utilization of funds that you have raised from your taxpayers is a responsibility that exists equally for us at the federal level. And, it prevents us from complying with the Quebec government's demand to make out a blank cheque and from giving this global sum to the province. I would like to say, however, that I understand and accept the opinion of the provincial government that the housing funds should be spent for provincial objectives following their order of priority. There is no objection to this.

However, we must discuss the matter, reach an understanding, and, above all, take action, for I do not wish the funds allocated to Quebec to be forfeited as a result of their not having been used.

I am aware that one of your prime concerns is municipal finances. Rest assured that I share this concern.

We want cities that are financially sound, where taxpayers share an equitable tax burden and, at the same time,

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benefit from adequate community services. As I stated in Edmonton early in the year and more recently in Halifax, where I had the pleasure of meeting with provincial and municipal representatives during intergovernmental discussions, the Ministry is seriously looking at the problem. It has even submitted a proposal that the federal government is currently studying. We know that financial problems are not as acute in some cities as they are in others, that in certain places citizens are overtaxed and that you cannot increase the services that are demanded. On the other hand, in other places, municipal taxes are perhaps not so high, but services leave something to be desired.

. .

We want municipalities where the cost of development and services is equitably distributed among all the inhabitants. We want to control urban sprawl, which enables some citizens to dodge a city's taxes but continue to benefit from its services and facilities. We don't want to repeat the formula that drove New York City to financial disaster.

Municipal finances are a priority for us. I give much of my time to this very important matter because I consider that it is a matter of common sense.

Since your responsibilities in the municipalities have grown it is normal that your financial responsibilities are of more importance too.

Personally, I think it is logical that you called on the Minister of State for Urban Affairs to discuss and help in finding a solution to the ambiguous problem.

We all agree that we want cities where we can live in safety and where we can live productive, fulfilled lives. Together, we must ensure that our cities and their communication links--air, rail and highways--serve us well for a long time to come.

We want cities which do not waste our resources, particularly our non-renewable energy resources. We know that we must improve considerably the heat-retaining capacity of our homes, commercial buildings and factories and the efficiency of our public transit systems.

We want cities with plenty of sun and green space--cities where the natural environment has been preserved. Our cities must be solidly built and their sewage must be adequately treated before it is discharged into our lakes and rivers.

We want cities where justice, peace and respect for others prevail. The immediate surroundings, that is, the home, the neighbourhood and the community services available in our cities, definitely exert an influence on the social behaviour of individuals. Assisting home renovation and providing affordable housing for low-income people and good community services and facilities will certainly help to create a more balanced environment and reduce disparities.

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We want cities protected as much as possible from natural disasters such as flooding and landslides. We must therefore take great care in deciding on the location of new development projects, buildings and facilities and test the vulnerability of construction materials.

We want cities that are not in themselves inflation mechanisms. In certain places, for example, increases in the cost of housing and other services can be reflected in both wage demands and business costs; these increases may then be passed on to the country's entire population.

This, ladies and gentlemen, majors and municipal councillors of Quebec, is what I wanted to say to you. I have tried to describe urban realities as we perceive them at the national level, and to explain what we in the federal government intend to do to keep up-to-date, without intruding upon your provincial or municipal jurisdictions. This is what we can contribute, with your co-operation. I am convinced that our objectives coincide with yours and that we can work together for the well-being of the residents of our towns and cities.

If I may summarize my thoughts for you, here is what the federal government is saying: "We fully realize that, by force of circumstance, we are present in your cities and that it is not in the best interests of Canadians that we withdraw from

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them. Furthermore, we realize that it is you, the provincial and municipal leaders, who are the final authority on matters of urban and regional development and local administration. The federal government, too, has an obligation to be a good urban citizen. Can we not sit down at the same table, discuss the problems we share and together work out realistic solutions? Can we not apply these solutions in a concerted manner, each doing our part in our own sphere of jurisdiction and in the best interests of our respective taxpayers? Let us not forget that, in the final analysis, we all draw on one and the same source and that we must all serve the same taxpayers."

To acknowledge this fact is not to abdicate one's responsibilities or to make concessions, constitutional or otherwise. On the contrary, it is to fully assume one's responsibilities.

Some of you are no doubt familiar with the classic declaration made by the ancient Athenians, which reads in substance as follows:

"We shall never bring dishonour or infamy on this city; we shall fight for the ideals of this city and all that it holds sacred; we shall venerate its laws and obey them; we shall never give up our efforts to intensify its citizens' feelings of civic duty; in doing so, we may be able to leave our descendants a city that is bigger, better and more beautiful than it was when it came into our hands."

Allow me, ladies and gentlemen, mayors and aldermen, to tell you that it is my earnest hope to be able to help you hand down to posterity a city which has been greatly improved.